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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 433

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED DECEMBER 5, 1950.

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In United States District Court
For the Western District of Oklahoma

Case No. 4562

CHAMPLIN REFINING COMPANY, PLAINTIFF,
vs.
UNITED STATES, DEFENDANT.

Complaint—Filed September 7, 1949

To the Honorable, the Judges of the District Court of the United States for the Western District of Oklahoma:

The Champlin Refining Company, plaintiff, invokes the jurisdiction of this Court under Chapter 157 (Sections 2321-2325) and Sections 1336 and 1398 of Title 28 of the United States Code to enjoin, set aside, suspend and annul a certain order of the Interstate Commerce Commission, dated June 13, 1949, hereinafter more fully set forth, and in support of its petition for injunctive relief, the plaintiff says:

I.

The plaintiff is a corporation organized and existing under the laws of New Mexico with principal place of business in Enid, Oklahoma.

II.

The business of the plaintiff is producing, refining and marketing petroleum and its products. The plaintiff operates a refinery at Enid, Oklahoma, and as an incident to its refining business, the plaintiff owns and operates a six-inch products pipe line which extends from its refinery to terminals at Hutchinson, Kansas; Superior, Nebraska and Rock Rapids, Iowa, a distance of approximately 516 miles.

The plaintiff uses the aforesaid line exclusively for the movement of its own refined products from its re-
2 finery to storage tanks and re-processing plants at the respective terminals above described. The products are re-processed in part at such terminals and thereafter sold out of the storage tanks to the wholesale trade.

III.

The said pipe line was constructed to Superior, Nebraska, in 1935 and was extended to Rock Rapids, Iowa, in 1941. For some years prior to 1935 the business of the plaintiff had showed a steady decline because the construction of refineries in areas near former markets and the operation

of pipe lines, barge lines and transport trucks provided sources of supply near many customers, all of which was destructive of trade connections of the plaintiff in the territory thus affected. The construction of the pipe line restored the trade of the plaintiff, thus saving the company from practical extinction. The pipe line is equally necessary at the present time to enable the plaintiff to hold its position in the market which it serves.

The plaintiff needs the entire available capacity of its said pipe line in the movement of its own products, and operates the line practically continuously in transporting the products of its own refinery.

IV.

The plaintiff has never transported nor offered, nor held itself out to transport through the said pipe line any petroleum products belonging to any other person or company. All products which move through the products pipe line are and always have been manufactured by the plaintiff at its refinery. The plaintiff is and always has been the sole owner of all products moved through the pipe line and all products at the three terminals. All sales of products moving through the pipe line are made out of the whole-
3 sale tanks at the terminals. None of said products are ever sold or allocated to any particular customer until they are stored in the tanks at the respective terminals. When the products are placed in the pipe line, they are destined only for terminal storage and re-processing at one of the plaintiff's terminals. The plaintiff has never filed tariffs with the Interstate Commerce Commission or with any state commission or any other governmental agency with reference to the said products line. The right of eminent domain has never been assumed or exercised by the plaintiff in connection with this pipe line.

V.

The products pipe line of the plaintiff is not clothed with a public interest as a means of serving shippers and no claim of public interest is made by the Commission. On the contrary, common carrier pipe line transportation is available to any refinery in this area which has need of the same.

Nor is the plaintiff's pipe line clothed with a public interest in the distribution of petroleum products on the market, and no claim of such public interest is made by the Commission. On the contrary, the products of the plaintiff

which move through the said line constitute only 1.98% of the total products sold by all companies in the same marketing territory.

VI.

On September 15, 1947, the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission wrote to the plaintiff requesting that with reference to the above described products pipe line, the plaintiff file the annual reports and institute and maintain the uniform system of accounts required of common carriers by Section 20 of the Interstate Commerce Act (49 U. S. C. 20).

On January 27, 1948, the Bureau of Traffic of the Interstate Commerce Commission wrote the plaintiff re-
4 questing that, with reference to the above described products pipe line, the plaintiff publish and file with the Commission a tariff fixing rates between the various localities on the said pipe line, as required of common carriers under Section 6 of the Interstate Commerce Act (49 U. S. C. 6). The plaintiff replied to each of these requests that the said products pipe line is not a common carrier and that the provisions of the Interstate Commerce Act above cited are not applicable to such pipe line.

On February 2, 1948, the Commission, upon its own motion, instituted an investigation in Docket No. 29912 relative to the liability of the plaintiff to file the annual reports and to maintain the uniform system of accounts above described.

On March 3, 1948, the Commission instituted an investigation in Docket No. 29912 (Sub-No. 1) relative to the liability of the plaintiff to file the tariffs above described.

The two investigations above named were consolidated for hearing, and a hearing was held on July 20 and 21, 1948, before Honorable J. Paul Kelly, Examiner for the Commission, at which the plaintiff appeared and introduced evidence.

On June 13, 1949, after due consideration thereof, the Interstate Commerce Commission issued a report in its said Dockets Nos. 29912 and 29912 (Sub. No. 1), in which it was concluded that the above described products pipe line is a common carrier under the terms of the Interstate Commerce Act, and on the same date the Commission entered its order requiring that the plaintiff, on or before September 29, 1949, file tariffs with respect to the said line and to make the annual reports and to keep the uniform accounts which are required of common carriers under the Act.

Two commissioners dissented and two others did not join in the report.

5 The plaintiff duly filed its petition for reconsideration with the Commission and on July 21, 1949 the Commission overruled the said petition. A certified transcript of the said report, order and denial of reconsideration is attached hereto, marked Exhibit "A" and by such reference made a part hereof.

VII.

The plaintiff alleges that it is not a common carrier in fact or in law; that the said order is not based on evidence and is contrary to the provisions and intent of the Interstate Commerce Act and that the said order is void as in excess of the powers conferred upon the Commission by the Interstate Commerce Act.

VIII.

The plaintiff further alleges that if the Interstate Commerce Act be construed to require the plaintiff to file tariffs, make annual reports and keep a uniform system of accounts, as above stated, the said Act and the orders thereon based are unconstitutional and void in that they deprive this plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Plaintiff alleges in support of the above allegation, that if it be required to file tariffs it will thereby commit itself to carry the petroleum products tendered to it by any shipper, including its competitors, and that it will thereby be deprived of the use of all or a substantial part of its said private pipe line. The said pipe line is the only means by which the plaintiff can move its products to its only available market in competition with the products of other companies, and if it be deprived of the use of its line by the said order, it will thereby be deprived of the markets upon which the existence of the company depends.

Plaintiff further alleges in support of the above
6 allegation that the annual reports and the uniform system of accounting required by said report and orders of the Commission are applicable only to common carriers and that the order of the Commission attempting to require the plaintiff to make said reports and institute said uniform accounts as to its private pipe line, is arbitrary, capricious and in conflict with the constitutional guaranty of due process of law.

IX.

The plaintiff alleges that the injury to the plaintiff on account of the report and order of the Commission hereinabove described is irreparable for which the plaintiff has no remedy at law and that by reason thereof, plaintiff is entitled to an injunction, enjoining the defendant from enforcing the provisions of the said report and order.

X.

The preparation for the hearing before this court will require much time and effort and it will not be possible to prepare adequately therefor prior to the effective date of the order. Plaintiff alleges that unless the said order be immediately restrained, the plaintiff will either (a) be subject to the penal provisions of the Act, or (b) be required to file tariffs, publish reports and institute the accounting system required of common carriers before this court will have had opportunity to judge the validity of the Commission's order. The publication of tariffs will commit the said plaintiff to operate the said pipe line as a common carrier and to convert its private pipe line into a public utility without its consent. The making of annual reports and the keeping of uniform accounts will subject the plaintiff to the expenditure of large sums of money needlessly, inasmuch as said reports and accounts are
7 applicable only to common carriers. The damages which plaintiff will sustain by reason thereof, will be irreparable. Furthermore, no damage will result to any other person or party and the interest of no other person or party will be impaired by a stay or suspension of the order until the final decision of this Court herein.

WHEREFORE, plaintiff respectfully asks:

(1) That upon the filing of this complaint, a judge of this court grant a temporary restraining order, enjoining the United States from enforcing the above described orders of the Interstate Commerce Commission until the hearing and determination of this petition by the full court;

(2) That a three judge court be assembled as provided by Title 28, United States Code, Section 2284;

(3) That process issue against the defendant United States and that after not less than five days notice to the Attorney General of the United States and to the Interstate Commerce Commission as provided by law, a hearing be held and an interlocutory injunction be issued staying and suspending the said order of the Interstate Commerce Commission;

(4) That upon final hearing of this cause a permanent injunction be issued decreeing that said report and orders of the Commission are null and void, that their enforcement, execution and operation be forever enjoined, and that the United States be restrained from instituting or further prosecuting any proceeding to enforce the aforesaid order or any subsequent orders relating thereto; and,

(5) That such other general and further relief as may be proper in the premises be granted to the plaintiff.

DAN MOODY
Austin, Texas

HARRY O. GLASSER
Enid, Oklahoma

N. S. SCARBITT
Enid, Oklahoma

E. S. CHAMPLIN
Enid, Oklahoma
Attorneys for Plaintiff

8 *Duly sworn to by Joe N. Champlin.*
Jurat omitted in printing.

9 *Exhibit "A" to Complaint*

Interstate Commerce Commission
Washington 25

I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Report and order of the Commission, filed and entered June 13, 1949; and

Order of the Commission entered July 21, 1949.

in Dockets Nos. 29912, Champlin Refining Company Accounts and Reports; and 29912 (Sub-No. 1), Champlin Refining Company Tariffs, the originals of which are now on file and of record in the office of said Commission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 21st day of July, A. D. 1949.

(SEAL)

W. P. BARTEL
Secretary of the Interstate Commerce Commission

No. 29912[1]

CHAMPLAIN REFINING COMPANY ACCOUNTS AND REPORTS

Submitted May 10, 1949. *Decided June 13, 1949.*

Champlain Refining Company found to be a statutory common carrier of petroleum products by pipe line in interstate commerce, and required to comply with the provisions of sections 6 and 20 of the Interstate Commerce Act.

Harry O. Glasser, Nathan Scarritt, E. S. Champlain, and *Samuel H. Horne* for the respondent.

Harry L. Underwood for the Interstate Commerce Commission.

REPORT OF THE COMMISSION

By the COMMISSION:

Exceptions to the examiner's proposed report were filed by the respondent, and we have heard oral argument. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been given consideration and found not justified.

The title proceeding was instituted by order entered on February 2, 1948, by division 1, upon its own motion, because the Champlin Refining Company, herein called Champlin or the respondent, had failed to comply with the requirements of section 20 of the Interstate Commerce Act,[2] and our orders and regulations made pursuant thereto, with respect to accounting and the making and

11 filing of annual and other reports. No. 29912 (Sub. No. 1) was instituted by order entered on March 3, 1948, by division 2, upon its own motion, because the respondent had failed to comply with the requirements of our section 6 of the act,[2] and orders and regulations made pursuant thereto, with respect to the publishing, posting, and filing of tariffs. The proceedings together constitute an investigation and inquiry into the acts, practices, and conduct of the respondent in respect of such non-compliance with the sections of the act named in the orders, with a view to making such orders as may be proper in the prem-

[1] This report also embraces No. 29912 (Sub-No. 1), Champlin Refining Company Tariffs.

[2] Pertinent portions of sections 6 and 20 are shown in the appendix.

ises. They were heard together on a common record and, after the hearing, were consolidated for our final determination.

Copies of our orders and regulations made pursuant to the requirements of sections 6 and 20 of the act, and copies of correspondence with the respondent in relation thereto, were made a part of the record. By agreement of counsel, certain parts of the records made in *Champlin Refining Co., Valuation of Pipe Line,* 49 Val. Rep. 463 and 542 (the latter, a report on reargument, were incorporated into this record by reference.

In the valuation proceeding, we found Champlin to be a common carrier of refined petroleum produces by pipe line and to be subject to the provisions of the act. An order was entered directing Champlin to comply with the provisions of the valuation orders previously served upon it. Champlin's bill to set aside that order was dismissed by the District Court of the United States for the Western District of Oklahoma, 59 F. Supp. 978. On appeal, that action was affirmed by the Supreme Court. *Champlin Refining Co. v. United States,* 329 U. S. 29.

Aside from the total investment in the pipe line and appurtenant facilities, now said to be $3,230,050.26, certain factual statements embodied in the reports in the valuation proceeding are admitted by respondent to be true for the purpose of the instant proceeding. The portions of those statements essential to an understanding of the issues before us follow:

12 The Champlin is a corporation of the State of New Mexico, authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile gasoline pipe-line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as

follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks, and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid.

* * *

Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line.

The principal change in the practices of the respondent in recent years is in the method of pricing the products which are transported through its pipe line. In the report on reargument in the valuation proceeding the method then used was described as follows:

13 In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date-of-shipment sale. The other, or contract sale, is based on yearly contracts with its customers. The spot, or f.o.b, price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7 a. m. Friday morning and remain in force until the next succeeding Friday, or

until a change is made in the Chicago Journal of Commerce price for the particular product. The delivered price includes, in addition to the spot or f.o.b. charges at the Enid refinery, a charge called a differential which is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe-line terminal.

The differential method of pricing was abandoned on May 10, 1948. On and since that date the terminal prices have been posted at each terminal, and competitive market conditions are met by allowances under these terminal prices where required. These allowances range from ⅛ cent to ½ cent per gallon and are intended to place respondent's products on the market at the general market price in each locality served by the pipe line. The changeover on May 10, 1948, resulted in net increases or decreases of from ⅛ cent to ½ cent per gallon at more than 70 percent of the destinations served by respondent out of its Superior and Rock Rapids terminals. A change of ⅛ cent per gallon or more is recognized in the trade as substantial. No separate charge as such is now made for transportation, either in the invoices or in any contract for the sale of its products. It is still true, however, that the terminal price as posted takes into account the total costs of operating respondent's facilities, including the pipe line, and since the prices at each terminal must be competitive, now as prior to May 10, 1948, the net price result must necessarily approximate what it would be under the differential method, for, as stated in
14 respondent's brief, "respondent at its terminals must meet the prices established by the sales of its competitors constituting over 98 percent of the total market."

Champlin argues that the holding of the Supreme Court in *Champlin Refining Co. v. United States, supra*, that the operation of respondent's line was transportation within the meaning of the act, was based upon the use by Champlin of a differential method of basing prices, and that having now abandoned that method and installed the present method of terminal pricing, it has thereby changed the character of its operations. The language of the Court

relied upon in this respect was used to point out a distinction between the operations of respondent and those of the Uncle Sam Oil Company, considered by the Court, among others, in *The Pipe Line Cases*, 234 U. S. 548. The language used is as follows, page 34:

> Appellant states that as to some deliveries "rail rates were used merely as a basis for calculating a delivered price, not as a charge for transportation." Even so, and even though departures from the calculated differential are substantial and frequent, we think this practice points up a significant distinction from the Uncle Sam case.
>
> We hold that Champlin's operation is transportation within the meaning of the Act and that the statute supports the Commission's order to furnish information.

As above shown, the change in the pricing method was a change in name more than in substance, the resulting terminal price, now as under the differential method, generally being the price made necessary by competition and, as such, including the transportation cost or as much of it as was or is permissible under the prevailing competitive conditions. There is no reason to believe that the Court would have reached a different conclusion had approximately the same pricing results been reached by a method other than the differential basis then in use.

15 As in the valuation proceeding, respondent contends, basically, that it is not a common carrier and that its pipe-line operation is not transportation within the meaning of the act. An understanding of the arguments advanced under this contention requires a discussion of certain additional facts bearing upon respondent's operations. Champlin's marketing area, generally speaking, embraces the States of Kansas, Iowa, Minnesota, Nebraska, Colorado, and South Dakota. For all practical purposes, the entire capacity of the pipe line is used in transporting the products of Champlin's refinery for distribution in this area. Only about 1.98 percent of the total gasoline consumed in the area is moved through the pipe line and sold from respondent's terminal storage facilities. The capacity of the pipe line, 9,800 barrels a day, represents only 5 percent of the total products pipe-line capacity served by its Superior terminal and only 7 percent of the total products pipe-line capacity served as markets adjacent to the Rock Rapids terminal. The total capacity of the common-carrier lines into the Nebraska market is about

13 times that of the Champlin line and about 10 times that of the latter into the Iowa market. The common carrier pipe-line capacity available to refineries in Oklahoma and Kansas aggregates 172,800 barrels a day, and respondent's pipe line is the smallest of any common-carrier or private pipe line operating in this territory. Apparently, common carrier pipe-line transportation is available to any small refiner in this area desiring such transportation.

Champlin's daily refining capacity of 18,000 barrels is small compared with the capacity of its large competitors in the same area. There are 86 wholesale outlets, including refineries, pipe-line terminals, and barge terminals, in this marketing area which are competing for the business of practically every prospective customer, and in addi-
16 tion, any jobber in the area may purchase his products from the 60 or more refineries in Oklahoma, Kansas, Arkansas, Illinois, Indiana, Texas, Wyoming, and Montana which deliver petroleum products into the territory by truck and rail.

The foregoing facts are cited by respondent to show that its pipe line is not clothed with a public interest and, in fact, is not needed for public transportation. It points out that in both *The Pipe Line Cases, supra,* and *Valvoline Oil Co. v. United States,* 308 U. S. 141, the pipe-line transportation therein concerned, excepting that of the Uncle Sam Oil Company in the first proceeding, was held to be transportation within the meaning of act because the pipe-line companies were carrying for others "all oil offered," as in the first proceeding, and a "public interest" was found "in the sole means of transporting this commodity from thousands of wells for thousands of producers," as in the second proceeding. In contrast, respondent emphasizes that it refines its own oil, moves only its own products through its own pipe line, stores its own products in its own storage facilities, where some of them are further processed, and subsequently markets its products from its storage tanks in the ordinary course of business.

Champlin insists that upon the facts presented its status must be held to be similar to that of the Uncle Sam company above referred to. With respect to the operation of that company, the Court said in *The Pipe Line Cases, supra,* page 562, that it was "simply drawing oil from its own wells across a State line to its own refinery for its own use." The Court considered that this was not transportation within the meaning of the act. The situation before us differs. Champlin's pipe line is not used for drawing

oil to its own refinery. It is used to transport refined products from the refinery to interstate points for sale.

17 Before proceeding further, it is well to call specific attention to the provisions of the act with which we are dealing. Except for minor revisions in language, these provisions as they affect pipe-line companies are the same today as they were at the time of *The Pipe Line Cases, supra*, 35 years ago. Section 1 of the act reads, in part, as follows:

> (1) That the provisions of this part [Part I] shall apply to common carriers engaged in—
>
> * * * * * *
>
> (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * * from one State * * * to any other State * * *.
>
> (3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; * **

In *The Pipe Line Cases, supra*, pages 560-561, the Court said:

> The control of Congress over commerce among the States cannot be made the means of exercising powers not entrusted to it by the Constitution, but it may require those who are common carriers in substance to become so in form. So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.

More than 20 years elapsed following that decision before Champlin's pipe line was constructed. In interpreting the term "common carrier" as used in section 1 of the act, the Court said in *Champlin Refining Co. v. United States, supra*, pages 34-35:

> Admittedly Champlin is not a common carrier in the sense of the common law carrier for hire. However, the Act does not stop at this but goes on to say that its use of the term "common carrier" is to include all pipe-line companies—a meaningless addition if it thereby included only what the term without more always had included. * * * The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier.

Respondent argues that if it is required to comply with the provisions of section 6 of the act with respect to the filing of tariffs, it will be assuming the duties of a common carrier and thus be committing itself to open its line to the use of the public, so that its competitors could estab-
18 lish physical connections with it and largely absorb its line for their own use, thereby depriving the refinery served by the pipe line "of the only available market which it has built up through the years, and upon which the existence of the company depends." Thus, the effect of such an order, it argues, would be to convert its private property to public use without its consent, contrary to the due process clause of the Constitution. It calls attention to the following observation made by the court in *Champlin Refining Co. v. United States, supra,* page 35, in response to a similar contention made therein:

> But our conclusion rests on no such basis and affords no such implication. * * * The appellant in its entire period of operation has never been asked to carry the products of another and may never be. So far, the Commission has made no order which charges the appellant's obligations to any other company or person. If it does, it will be timely to consider concrete requirements and their specific effects on appellant.

Respondent is not contending that its subjection, insofar as the pipe-line operation is concerned, to the requirements of section 20 of the act would be the equivalent of converting its private property to public use, in contravention of the fifth amendment. As stated, the provisions of part I of the act are specifically made to apply to common carriers engaged in the transportation of oil by pipe line, and the term "common carrier" as used in that part includes "all pipe-line companies." The Supreme Court has held that Champlin's operation is transportation within the meaning of the act. After referring to the holding relating to the Uncle Sam company in *The Pipe Line Cases, supra,* the Court said, page 33:

> But we think it would expand the actual holding of that case to apply its conclusion to Champlin. The controlling fact under the statute is transporting commodities from State to State by pipe line.

The controlling facts surrounding the operation of this pipe line, including the pricing method in its ultimate re-
sult are the same now as they were then.
19 As pointed out, respondent in its pipe line has never transported oil belonging to another, and there

has never been and is not now any physical connection between its pipe line and any other pipe line or facility which would permit the use of respondent's line by any one but its owner. So far as appears, no other pipe-line company has threatened to force such a connection, and because of the ample common-carrier pipe-line facilities available, as revealed by respondent, no refinery would be likely to interest itself in such a connection. Nor are we referred to any order of this or any other governmental agency which would require such a result, or to any law, State or Federal, which would support such an order. So far as appears, therefore, the filing of tariffs and of annual and other reports would not prove to be a hardship to respondent and would not deprive it of any of its traffic or of the free use of its property, including the pipe-line facilities, without interference from its competitors.

Whether or not the effect of a requirement that respondent comply with the provisions of section 6 or section 20 of the act would be tantamount to taking private property for public use in contravention of the fifth amendment is an issue the determination of which is peculiarly within the province of the courts, and we shall make no attempt to pass upon it. All we are called upon to do, and all we are attempting to do here, is to determine whether or not the facts presented warrant a finding that respondent's pipe-line operation is "transportation" of a "common carrier" as those terms are used in section 1 of the act and as they have been interpreted by the Supreme Court.

We find that the Champlin Refining Company is a statutory common carrier of refined petroleum products by pipe line from one State to other States, and that it is subject to the provisions of the Interstate Commerce Act. An appropriate order will be entered requiring compliance with the provisions of sections 6 and 20 of the act.

SPLAWN, *Commissioner*, dissenting in part:

I disagree with the conclusions and finding in this report which require respondent, Champlin Refining Company, to comply with section 6 of the Act concerning the publishing, posting, and filing of tariffs.

Transportation of petroleum products by pipe line was made subject to the Act by an amendment in 1906. The circumstances in which that amendment was passed are stated in *The Pipe Line Cases*, 234 U. S. 548, 558-559. In that proceeding, certain large oil companies, through their ownership of pipe lines, had obtained a monopoly of the only practicable oil transportation between the oil fields east of

California and the Atlantic Ocean, and refused to transport any oil unless it was sold to them. The Court sustained our order which required those companies to file tariffs, pointing out (p. 560) that the "evident" purpose of the amendment "was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."

Here, the material factual situation is quite different. The pipe line under consideration in the instant proceeding is owned by Champlin, and the line always has been used exclusively to transport Champlin's own refined petroleum products from its refinery at Enid, Okla., to its storage facilities at Hutchinson, Kans., Superior, Nebr. and Rock Rapids, Iowa. Champlin utilizes the entire capacity of this pipe line on a full time basis.

21

Thus, the evidence is clear that there has been, and is, no holding out by Champlin of a common carrier service either directly or indirectly. None of the products moved through the line has ever been purchased from any other interest. Moreover, the evidence shows that the products transported through Champlin's pipe line constitutes an inconsequential part of the total volume of products that moves by pipe line to the consuming territory served by Champlin from its storage facilities.

Requiring Champlin to comply with our valuation orders and the requirements of section 20 of the Act with respect to accounting and the filing of annual and other reports is one thing, but to require it to file tariffs and thereby obligate itself to transport oil products of others in common carrier service, to the exclusion of its own, is something entirely different. The Supreme Court, in sustaining our valuation orders, it seems to me, recognized that there might be some such distinction. Concerning appellant's (Champlin's) contention that our valuation orders convert a private pipe line into a public utility and require a private carrier to become a common carrier, the Court said "But our conclusion rests on no such basis and affords no such implication." And after pointing out that our valuation orders only required Champlin to furnish certain information as to facilities being used in interstate marketing of its products, the Court held that, "The commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier." *Champlin Rfg. Co. v. United States*, 329 U. S. 29, 34-35.

22 I can not agree with the conclusion in this report that the filing of tariffs by Champlin will not be a hardship, or deprive it of the free use of its pipe-line facilities in the conduct of its refining business. On the contrary, it is reasonable to assume that Champlin will be called upon to perform the transportation service held out under its duly published tariffs; otherwise, it seems we are requiring a vain act for which there is no justification in law or sound reason.

The publishing of tariffs pursuant to the finding in this report will place upon Champlin the legal obligation to perform the transportation service specified in those tariffs, and to conform to the requirements of section 1(4) of the Act which provides that "It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates" etc.

The purpose of the amendment in 1906 was to protect small independent producers from monopoly power. This report construes that amendment so as to convert into a common carrier the pipe line wholly owned and completely utilized by a relatively small independent company, though the company is wholly dependent upon such facility exclusively owned and used in the conduct of its refining business. This ultra literal construction regardless of differing conditions and circumstances might well have the effect of destroying small independent companies instead of affording them the protection intended by the amendment.

23 MITCHELL, *Commissioner*, dissenting:

I cannot agree that Champlin is a common carrier by pipe line subject to our jurisdiction. That all pipe lines crossing state lines are subject to the Interstate Commerce Act is negatived by *The Pipe Line Cases*, 234 U. S. 548, where with respect to the Uncle Sam Oil Company, the Supreme Court expressly holds that private pipe-line transportation is lawful notwithstanding the terms of the Interstate Commerce Act.

The facts are not in dispute. Champlin has never sold products from the refinery at Enid. The products are sold from its three storage terminals. The products are never consigned to any particular customer. Champlin is the sole owner of the products in storage which have come to rest as a mere incident of Champlin's private business. The change in pricing method removes one of the grounds on

which the Supreme Court found that Champlin came under the Act for the purpose of valuation reports. It is to be remembered that Champlin supplies less than 2 percent of the gasoline consumed in the marketing area.

Section 19a provides only that we shall report the value of all property owned or used by every common carrier subject to the provisions of the Act. It is necessary to go to section 1(1)(b) and section 1(3) to determine when an enterprise is subject to the Act. Section 1 does not contemplate that a pipe line carrying only its own products as an incident to its principal business and not offering its services to the public is engaged in the transportation of oil as a common carrier. Section 1(3)(a) in stating that the term common carrier includes all pipe-line companies obviously means all of those pipe-line companies en-
24 gaged in the interstate transportation of oil for the public. It could not include pipe lines wholly within a state unless such pipe lines engaged in interstate transportation for all who offered shipments.

To require that Champlin publish and file tariffs with us can only be for one purpose, viz; to make Champlin's pipe lines available for use by all shippers. If that is not the purpose, then the requirement that tariffs be filed is an idle and futile gesture. If, following the filing of tariffs, Champlin's pipe line is used by other shippers, then to the extent of that use we are depriving Champlin of the use of its own pipe line for its own products.

The majority find that the entire capacity of the pipe line is used in transporting the products of Champlin's refinery. If the pipe line is not used by others, Champlin will be the carrier and the sole shipper. Champlin will tender shipments to itself, it will bill itself; it will give notice of arrival at destination to itself; and it will pay itself. It was never intended that an interpretation of the Act should bring about such a situation.

Commissioners Patterson and Johnson did not participate in the disposition of this proceeding.

25 Appendix

The portions of section 20 of the Interstate Commeree Act pertinent to this proceeding are as follows:

(1) The Commission is hereby authorized to require annual, periodical, or special reports from carriers (as refined in this section) and from lessors (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from

such carriers and lessors specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classifying such carriers and lessors as it may deem proper for any of these purposes. Such annual reports shall give an account of the affairs of the carrier or lessor in such form and detail as may be prescribed by the Commission.

(2) Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under paragraph (1) hereof, shall also be under oath whenever the Commission so requires.

(3) The Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this part, prescribe a uniform system of accounts applicable to any class of carriers subject thereto, and a period of time within which such class shall have such uniform system of accounts, and the manner in which such accounts shall be kept.

(4) The Commission shall, as soon as practicable, prescribe for carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. When the Commission shall have exercised its authority under the foregoing provisions of this paragraph, carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no such carrier shall include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the Commission.

* * *

26 (8) As used in this section the words "keep" and "kept" shall be construed to mean made, prepared, or complied, as well as retained; the term "carrier" means a common carrier subject to this part, and includes a receiver or trustee of such carrier; and the term "lessor" means a person owning a railroad, a water line, or a pipe line, leased to and operated by a common carrier subject to this part, and includes a receiver or trustee of such lessor.

The pertinent provision of section 6 of the act is as follows:

(1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. * * *

27 ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 13th day of June, A. D. 1949

No. 29912

CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS

No. 29912 (Sub-No. 1)

CHAMPLIN REFINING COMPANY TARIFFS

IT APPEARING, That by order dated February 2, 1948, the Commission, by division 1, upon its own motion instituted an investigation in No. 29912, for the purpose of inquiring into the acts, practices, and conduct of the Champlin Refining Company with respect to its failure to comply with the requirements of section 20 of the Interstate Commerce Act (49 U. S. C. 20) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto with respect to accounting and the making and filing of annual and other reports;

IT FURTHER APPEARING, That by order dated March 3, 1948, the Commission, by division 2, upon its motion, instituted an investigation in No. 29912 (Sub-No. 1) into the acts, practices and conduct of said Champlin Refining Company with respect to its failure to comply with the requirements

of section 6 of the Interstate Commerce Act (49 U. S. C. 6) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto with respect to the publishing, posting, and filing of tariffs;

IT FURTHER APPEARING, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and has found the said Champlin Refining Company to be a common carrier of refined petroleum products by pipe line and subject to the provisions of the Interstate Commerce Act:

IT IS ORDERED, That the said Champlin Refining Company be, and it is hereby, notified and required to file with the Interstate Commerce Commission annual, periodical, or special reports as required by the provisions of paragraphs (1) and (2) of section 20 of the Interstate Commerce Act (49 U. S. C. 20) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto.

IT IS FURTHER ORDERED, That the said Champlin Refining Company be, and it is hereby, notified and required to institute and henceforth maintain a uniform system of accounts applicable to pipe lines, as required by the provisions of paragraphs (3), (4) and (8) of section 20 of the Interstate Commerce Act (49 U. S. C. 20) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto.

28 IT IS FURTHER ORDERED, That said Champlin Refining Company be, and it is hereby, notified and required to publish and file tariff schedules showing the rates and charges for interstate transportation of refined petroleum products between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act (49 U. S. C. 6).

AND IT IS FURTHER ORDERED, That this order shall become effective September 29, 1949, and shall continue in force and effect until the further order of the Commission.

By the Commission.

W. P. BARTEL,
Secretary.

(SEAL.)

29 ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 21st day of July, A. D. 1949.

No. 29912

CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS

No. 29912 Sub No. 1.

CHAMPLIN REFINING COMPANY TARIFFS

Upon further consideration of the records in the above-entitled proceedings, and upon consideration of respondent's petition for reconsideration, and it appearing that good cause for reconsideration of the proceeding has not been shown:

IT IS ORDERED, That the said petition be, and it is hereby, denied.

By the Commission.

W. P. BARTEL,
(SEAL) *Secretary.*

30 (File Endorsement Omitted)

31 In United States District Court

Answer of the United States of America—
Filed November 10, 1949

Now comes the United States of America, defendant in the above-styled cause, and in response to the complaint filed herein answers and says:

I

Defendant admits the jurisdiction of this Court over the parties and the subject matter of this suit.

II

Answering paragraph I of the complaint, the United States says that it is informed and believes that the statement therein contained is true.

III

Answering paragraph II of the complaint, the United States denies that the pipe line operation is an incident to plaintiff's refining business but instead alleges that the pipe line operation is an essential part of the plaintiff's business. The United States further alleges that the al-

legations of the second paragraph of paragraph II are not within the knowledge of the United States and therefore are neither admitted nor denied. Further, the
32 United States alleges that it is informed and believes that the pipe line referred to in paragraph II of the complaint is a six-inch, not an eight-inch pipe line.

IV

Answering the allegations of paragraph III of the complaint, the United States alleges that it is informed and believes that the allegations therein contained are true except the allegations that plaintiff [illegible]eds the entire available capacity of its pipe line in the [illegible]vement of its own products, as to which allegation the United States is without knowledge or information sufficient to form a belief and so that allegation is neither admitted nor denied.

V

Answering paragraph IV of the complaint, the United States admits, for the purposes of this suit only, that the plaintiff has not transported nor offered to transport through its pipe line any petroleum products belonging to any other person or company if this is meant to apply only to products not products of plaintiff's refinery. The United States alleges that it is without knowledge as to the ownership of all products moving through the pipe line and all products at the three terminals. The United States further alleges that it is without knowledge as to where the sale of the products is made.

The United States admits that the plaintiff has never filed tariffs with the Interstate Commerce Commission. Further answering, the United States alleges that the remaining allegations of paragraph IV are not within the knowledge of the United States and therefore are neither admitted nor denied.

VI

In answering the allegations contained in paragraph V, the United States alleges that the plaintiff in virtue of its operation of the pipe line was and is a common car-
33 rier and is therefore subject to the provisions of the Interstate Commerce Act. Further answering, the United States alleges that the remaining allegations of paragraph V are not within the knowledge of the United States and therefore are neither admitted nor denied.

VII

Answering paragraph VI of the complaint, the United States admits the allegations therein contained except in regard to the statement that two Commissioners dissented from the report and order of June 13, 1949. The United States alleges that one of the dissenting Commissioners dissented only with the conclusion and finding which require complainant to comply with Section 6 of the Interstate Commerce Act concerning the publishing, posting, and filing of tariffs.

VIII

Answering the allegations of paragraph VII, the United States denies the allegations therein contained, and alleges that the plaintiff is a common carrier. The United States further alleges that the order of the Interstate Commerce Commission of June 13, 1949, which is in issue in the case at bar, was based on substantial evidence after full and fair hearing, is consistent with the provisions and intent of the Interstate Commerce Act, and is an order of the Commission which is valid and lawful in all respects.

IX

Answering the allegations of paragraph VIII, the United States denies that the Interstate Commerce Act and the orders based thereon, by requiring the plaintiff to file tariffs, make annual reports and keep a uniform system of accounts, are unconstitutional or void, and the United States further denies that either the Interstate Commerce Act or the orders based thereon deprive the plaintiff of its property without due process of law in violation
34 of the Fifth Amendment to the Constitution of the United States.

Further answering, the United States denies that the said order of the Commission does not apply to the plaintiff, found by the Commission to be a common carrier, and further denies that said order is arbitrary, capricious, or in conflict with any constitutional provision.

X

Answering the allegations of paragraph IX, the United States denies that the order of the Commission, which is challenged in the complaint, will result in any legal damage, but instead alleges that any damage which might be suffered by plaintiff because of said order is only the result of the exercise of the authority of the Commission pursuant to its statutory duties in enforcing the provisions of the Interstate Commerce Act.

XI

Answering the allegations of paragraph X, the United States admits that the plaintiff must comply with the order of the Commission of June 13, 1949, or be subject to the penal provisions of the Act. Further answering the United States alleges that the plaintiff is a common carrier within the meaning and intent of the Interstate Commerce Act; that therefore the provision of the Act relating to the publishing of tariffs, the making of annual reports and the keeping of uniform accounts are applicable to the plaintiff; and that compliance with the said order of the Commission will not cause plaintiff any legal damage.

XII

For further answer to plaintiff's complaint, the United States avers that the order herein assailed was made and issued within the Commission's statutory authority upon substantial evidence after full and fair hearing, and that this order is lawful and valid in all respects. Defendant, United States, denies that said order is
35 invalid for the reasons assigned in plaintiff's complaint or for any reason whatsoever.

XIII

Except as herein expressly admitted, defendant denies each and every allegation in the complaint contained.

WHEREFORE, defendant prays that the relief prayed for by plaintiff be denied and that the complaint be dismissd, plaintiff to pay the costs, and that the United States have the benefit of such further orders, decrees, or relief as may be just and proper.

WILLIAM D. MCFARLANE
William D. McFarlane
Special Assistant to the Attorney General

FREDERICK R. HANLON
Frederick R. Hanlon
Special Attorney
Department of Justice, Washington 25, D. C.
Attorneys for the United States of America, Defendant

HERBERT A. BERGSON
Assistant Attorney General

JAMES E. KILDAY
Special Assistant to the Attorney General

ROBERT E. SHELTON
United States Attorney

36 CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing answer has been mailed to the following persons:

Dan Moody, Esq.
Austin, Texas
Harry O. Glasser, Esq.
Enid, Oklahoma
N. S. Scarritt, Esq.
Enid, Oklahoma
E. S. Champlin, Esq.
Enid, Oklahoma
H. L. Underwood, Esq.
Assistant Chief Counsel
Interstate Commerce Commission
Washington 25, D. C.

November 8, 1949.

FREDERICK R. HANLON
Frederick R. Hanlon
Special Attorney

(File Endorsement Omitted)

37 In United States District Court

Intervention of the Interstate Commerce Commission—Filed October 28, 1949

TO THE HONORABLE JUDGES OF SAID COURT:

In accordance with the provisions of Section 2323, Title 28 U. S. Code, we hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

DANIEL W. KNOWLTON
Chief Counsel

H. L. UNDERWOOD
Assistant Chief Counsel

FOR INTERSTATE COMMERCE COMMISSION,
3327 Interstate Commerce Comm. Bldg.,
Washington 25, D. C.

(File Endorsement Omitted)

38 In United States District Court

Answer of Interstate Commerce Commission—Filed October 28, 1949

The Interstate Commerce Commission, hereinafter called the Commission, an intervening defendant in the above-entitled cause, for answer to the complaint herein filed, says:

I.

The Commission admits the allegations of paragraph I of the complaint.

II.

The Commission admits the allegations of paragraph II, except the allegation that plaintiff's operation of its pipe line is an incident to its refining business, which it denies and alleges to the contrary that said pipe line operation is an important and essential part of the business of plaintiff; and except the allegations of the second subparagraph of said paragraph concerning the exclusive use of the pipe line for the movement of the products of plaintiff, the re-

39 processing of the products and the sale thereof at its terminals, as to which allegations the Commission is without knowledge sufficient to form a belief as to the truth thereof.

III.

Answering paragraph III of the complaint, the Commission admits the allegations thereof except the allegation that plaintiff needs the entire capacity of its pipe line in the movement of its own products, as to which it is without knowledge or information sufficient to form a belief.

IV.

Answering paragraph IV of the complaint, the Commission admits for the purpose of this suit only, the allegation that plaintiff has not transported or offered to transport through its pipe line, products of others; if said allegation is meant to apply only to products which are not products of plaintiff's refinery; and also that the products which move through said pipe line are manufactured by it at its refinery.

In respect to the allegations as to the ownership of all products moving through the pipe line and of all products at the terminals and as to where sale thereof is made, the Commission submits that such are questions of law and need not be answered.

The Commission admits that the plaintiff has not filed tariffs with it. All other allegations are denied.

V.

Answering paragraph V of the complaint, the Commission denies the allegations contained therein. On the contrary it alleges that the said plaintiff in and by its operation of the said pipe line was and is a common carrier and as such subject to the requirements imposed on such a carrier by the Interstate Commerce Act.

40 VI.

Answering paragraph VI, the Commission admits the allegations therein contained, except that in respect of the allegations that two Commissioners dissented from the report of the Commission (last subparagraph, page 4 of complaint). The Commission avers that one of the dissenting Commissioners dissented as to the requirement for filing tariffs only.

VII.

Answering paragraph VII, the Commission denies the allegations therein contained, and alleges on the contrary that the plaintiff is a common carrier; that the order of the Commission was based on sufficient and adequate evidence and it is consistent with the law, the facts and the terms and intent of the Interstate Commerce Act, and is a valid order made in the exercise of the Commission powers under the said Act, in a proceeding in which plaintiff had been accorded a full and fair hearing.

VIII.

Answering paragraph VIII, the Commission denies that requiring the plaintiff to file tariffs, make annual reports and keep a uniform system of accounts, deprives it of its property without due process in violation of the Fifth amendment; denies that its order making such requirements is void for the reasons alleged or for any other reason or reasons; denies that its order does not apply to plaintiff and denies that said order is arbitrary, capricious and in conflict with any constitutional provision.

On the contrary, the Commission alleges that plaintiff is a common carrier under the terms of the Interstate Commerce Act and subject to regulation as provided in that Act for common carriers.

40a

IX.

Answering paragraph IX, the Commission denies that its order will result in irreparable legal damage to plaintiff, relievable in equity, and alleges that any damage which may be sustained is only such as may ensue from regulation legally imposed, pursuant to statute.

X.

Answering paragraph X, the Commission admits that under and by virtue of applicable statutes, the plaintiff must comply with the order of the Commission of June 13, 1949, when said order has become effective, or be subject to penalties prescribed in said statutes; it denies that compliance by plaintiff with such order will cause plaintiff any legal damage.

Except as herein expressly admitted, the Commission denies each and all the allegations contained in the complaint, especially insofar as they are in conflict with the findings, determination and conclusions stated in the Commission's report of June 13, 1949.

Wherefore, having made full answer, the Commission prays that the complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By H. L. UNDERWOOD,
Assistant Chief Counsel.

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

41

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Intervention and Answer of the Interstate Commerce Commission has been duly served by mail upon:

Dan Moody, Esq.,
Austin, Texas.
Harry O. Glasser, Esq.,
Suite 305, Knox Bldg.,
Enid, Okla.
N. S. Scarritt, Esq.,
Enid, Okla.
E. S. Champlin, Esq.,
Enid, Okla.
Attorneys for Plaintiff.

William D. McFarlane, Esq.,
Special Assistant to the Attorney General,
Department of Justice,
Washington 25, D. C.
Attorney for Defendant, United States.

on the 2th day of October, 1949.

H. L. UNDERWOOD,
Attorney for the Interstate Commerce Commission.

(File Endorsement Omitted)

43 In the United States District Court for the Western District of Oklahoma

No. 4562—Civil

CHAMPLIN REFINING COMPANY,
PLAINTIFF,
VS.
THE UNITED STATES OF AMERICA,
DEFENDANT,
and
INTERSTATE COMMERCE COMMISSION,
INTERVENER.

Excerpts from Reporter's Transcript of Trial Proceedings

Before: HONORABLE ORIE L. PHILLIPS, *United States Circuit Judge*, Tenth Circuit, Denver, Colorado;
HONORABLE ALFRED P. MURRAH, *United States Circuit Judge*, Tenth Circuit, Oklahoma City, Oklahoma; and
HONORABLE EDGAR S. VAUGHT, *United States District Judge*, Western District of Oklahoma, Oklahoma City, Oklahoma.

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON NOVEMBER 19, 1949 and AUGUST 28, 1950.

In the United States Court House and Post Office Building, Oklahoma City, Oklahoma.

APPEARANCES:

For the Plaintiff: Dan Moody, Austin, Texas; Harry O. Glasser, Enid, Oklahoma.

For the Defendant: William D. McFarlane, Special Assistant to the Attorney General, Washington, D. C.,
44 Robert E. Shelton, United States District Attorney, Western District of Oklahoma, Oklahoma City, Oklahoma.

For the Intervener: (Present at hearing on November 19, 1949) S. R. Howell, Attorney, Interstate Commerce Commission, Washington, D. C.

49 *Amendment of Complaint*

Mr. GLASSER: We have discovered that in the preparation of the Complaint, through some inadvertent or oversight on the first page of the Complaint, we alleged that pipe line to be an eight inch line, when in truth it should have been a six inch line, and we would like to have permission—

Judge PHILLIPS: You can make that by interlineation.

Mr. MCFARLANE: What line was that?

Mr. GLASSER: That's changing the eight inch line on page one down the fifth line from the bottom, change eight to six, will read "plaintiff owns and operates a six inch line" instead of an eight inch line.

Offer of Record and Exhibits Before Commission:

We desire to offer in evidence the properly certified transcript of all the proceedings and of all these exhibits and all of the record in the Interstate Commerce Commission which has been completely bound in one volume by the Secretary of the Commission, and under the seal of the Commission, but the volume contains 1,194 pages, and for the convenience of the Court we have divided it and we now offer in evidence the record in the Interstate Commerce Commission. I might say we furnish the Government with a complete copy of the transcript also.

Judge PHILLIPS: Very well, it will be received.

203 Harry O. Glasser and Dan Moody (Nathan Scarritt and E. S. Champlin were on the brief) for plaintiff.

William D. McFarlane, Special Asst. to the Atty. General, (Frederick R. Hanlon, Special Atty., Herbert A. Bergson, Asst. Atty. General, James E. Kilday, Special Asst. to the Atty. General, Robert E. Shelton, United States Atty., were on the brief) for the United States of America.

S. R. Howell, Atty., Interstate Commerce Commission, (Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission and H. L. Underwood, Asst. Chief Counsel, Interstate Commerce Commission were on the brief) for intervening defendant.

Before PHILLIPS and MURRAH, Circuit Judges, and VAUGHT, District Judge.

Opinion—Filed July 12, 1950

PHILLIPS, Circuit Judge.

204 Champlin Refining Company[5] brought this action seeking a judgment enjoining the Interstate Commerce Commission[6] from enforcing an order requiring Champlin "to file with the * * * Commission annual, periodical, or special reports as required by the provisions of paragraphs (1) and (2) of Section 20 of the Interstate Commerce Act[7] * * * and the orders and regulations of the * * * Commission made pursuant thereto"; "to institute and henceforth maintain a uniform system of accounts applicable to pipe lines, as required by the provisions of paragraphs (3), (4) and (8) of Section 20 of the Interstate Commerce Act * * * and the orders and regulations of the * * * Commission made pursuant thereto", and "to publish and file tariff schedules showing the rates and charges for

205 interstate transportation of refined petroleum products between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established, upon notice to" the Commission and the general public "by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act," and adjudging such orders to be invalid.

Champlin owns and operates a pipe line extending from its refinery at Enid, Oklahoma, to storage tanks owned by it at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The only openings in the pipe line are at the refinery at Enid and at such storage tanks. Such pipe line has no connection with any other pipe line. Champlin could not transport the petroleum products of others without constructing facilities for receiving such products into its line and without constructing terminal facilities for

206 delivering such products at the end of their transportation. Champlin uses the pipe line exclusively for the moving of gasoline, kerosene and tractor fuel from its refinery at Enid to such storage tanks. Such petroleum products so moved are discharged from its pipe line into such storage tanks where, at times and before the sale thereof, certain blending of the products is done, which neces-

[5] Hereinafter called Champlin.

[6] Hereinafter called the Commission.

[7] 49 USCA § 20.

sarily has an effect on their quality. At the three terminals Champlin maintains loading racks designed to load products from the storage tanks into railroad tank cars and tank trucks. Champlin is the manufacturer and sole owner of all of the products moved through its pipe line. It has never transported products belonging to any other person, firm or corporation. It has never proffered the service of its pipe line to any other person, firm or corporation, exchanged with any other person, firm or corporation any petroleum products which have moved through its
207 pipe line, filed any tariffs or rates with the Commission, or with any state regulatory agency, or assumed or exercised the right of eminent domain in connection with its pipe line.

Champlin markets the products that move through its pipe line only after they have come to rest in storage tanks at one of the three terminals, and in certain instances after additional processing. All products which have been shipped through the pipe line belong to Champlin and it retains title thereto until sales are made from its bulk storage tanks at one of the terminals. In no instance has it made a sale on condition that the product sold would be shipped by means of the pipe line.

A prior action brought by Champlin (Champlin Refining Co. v. United States *et al.*, 59 F. Supp. 978, 329 U. S. 29) involved an order of the Commission requiring Champlin to file under the provisions of § 19a of the Interstate Commerce Act, inventory, schedules, maps and charts of
208 its pipe line property, in compliance with Commission Valuation Orders Nos. 26 and 27.

At the time of the trial of the prior case, there was involved in Champlin's marketing system a factor, which for convenience was referred to as the "differential," being a sum added to the sale price of products F. O. B. the Enid refinery.[8] The amount to be so added was determined by competitive prices in the marketing areas, and was a device for meeting competitors' prices. The differential was a sum, which when added to the sale price at the Enid refinery, resulted in a sale price f. o. b. the pipe line terminals, that enabled the purchaser to move the products from the storage tanks, where he made his purchase, to his place of business by means of his own choice, with a total resulting

[8] The price f. o. b. Enid is normally based upon the Chicago Journal of Commerce "group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding the date of shipment.

cost to him that did not exceed the sum which he could
209 have bought such products from Champlin's competitors, delivered to the purchaser's place of business. Sometimes, but not always, depending upon competitive prices, the differential would equal or approximate the difference between the cost of the through freight haul from the Enid refinery to the purchaser's place of business, less the cost of the local freight haul from the storage tanks to the purchaser's place of business. However, the differential varied constantly, depending upon the price at which competitors in the market territory were selling like products. Competitive prices, and not the cost of transportation or freight charges, determined the amount of differential. Any relation between the differential and the cost of transportation was incidental, because the controlling factor in arriving at the amount of the differential was the price at which the stronger marketers in the market territory offered their products for sale.

On May 10, 1948, and before the promulgation of the orders here involved, Champlin abandoned the
210 differential method of pricing. In lieu of that method Champlin has adopted the policy of posting prices at each of its terminals. Where competitive marketing conditions require it, Champlin makes allowances from the posted prices so that purchasers in such instances buy below the posted prices and thus Champlin meets the competitive market prices in the sale of its products. These allowances range from ⅛ to ½ cent per gallon, which are substantial amounts, and enable Champlin to put its products on the market in competition with other stronger marketers in the market area. On May 10, 1948, the change in pricing method reflected net increases or decreases of from ½ cent to ⅛ cent per gallon at more than 70 per cent of the destinations served by Champlin out of its Superior and Rock Rapids terminals.

The capacity of Champlin's pipe line is 9,800 barrels per day, as against common carrier pipe line capacity of 172,800 barrels per day, available to refineries in Oklahoma
211 and Kansas. Champlin's pipe line capacity is approximately five per cent of the total products pipe line capacity serving Superior, and seven per cent of the total pipe line capacity serving Rock Rapids. It is the smallest pipe line serving the territory. Only 1.98 per cent of all the gasoline consumed in the area served by Champlin's pipe line is moved through its pipe line and sold

from its terminal storage facilities. Champlin occupies such a relatively minor place in the gasoline market in the middle west that it is in no position to control the price of gasoline, kerosene, or tractor fuel, either by raising or lowering the price thereof. It is in no position to support price advances against its competitors or survive price cutting of its competitors.

By the Act of June 29, 1906 (the Hepburn Act) 34 Stat. 584, Congress first acted to regulate interstate transportation of oil by pipe lines. The part of that Act here material, reads as follows:

212 "Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States, or the District of Columbia, * * *."

By the Act of February 28, 1920, 41 Stat. 456, 474, amending the Interstate Commerce Act §1 of that Act was amended to read, in part, as follows:

"Sec. 400. * * *

"(1) That the provisions of this Act shall apply to common carriers engaged in— * * *

"(b) The transportation of oil or other commodi-

213 ty, except water and except natural or Artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * *

"(3) The term 'common carrier' as used in this Act shall include all pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire."

By the enactment of the Communications Act of 1934, 48 Stat. 1064, 1102, the provisions of the Interstate Commerce Act, as amended, in so far as they related to communications by wire or wireless, or to telegraph, telephone or cable companies operating by wire or wireless, except certain provisions not here material, were repealed, so that the phrase, "telegraph, telephone, and cable companies operating by wire or wireless," was eliminated from the definition of common carrier in the Interstate Commerce Act.

The question presented is whether Champlin is so engaged in the transportation of petroleum
214 products by pipe line within the meaning of §1 of the Interstate Commerce Act, as amended by §400 of the Transportation Act of 1920, that the Commission may require it to transport the petroleum products of others as a common carrier for hire. Admittedly, Champlin's operations fall within the literal language of such §1, but to construe the statute literally would result in far-reaching consequences, and in our judgment would raise grave constitutional questions.

In the Pipe Line Cases, 234 U. S. 548, the facts were these: Standard Oil Company and its affiliates controlled the only practical means of oil transportation in the area lying between California and the Atlantic seaboard and carried much the greater part of the oil transported in such area. They made use of their monopoly of such means of transportation by refusing to carry oil through their pipe lines unless the producers of the oil would first sell their oil to them at prices dictated by Standard. They carried
215 "everybody's oil", but imposed as a condition to the transportation that the oil be sold before it would be received into their pipe lines.[9] It was that situation which prompted Congress to enact that part of §1 of the Hepburn Act, which dealt with the transportation of oil by pipe lines.[10]

The Supreme Court held that Standard and its affiliates were common carriers of oil in everything but form; that they were common carriers in substance because they purchased and carried all oil offered; that the amendment ap-

[9] 234 U. S. 558, 559, 560, 561.

[10] Pipe Line Cases, 234 U. S. 548, 558-561;
Valvoline Oil Co. v. United States, 308 U. S. 141, 146;
40 Congressional Record 6361, 6365, 7000.

plied to them; that Congress, under the Commerce clause, could require those who are common carriers in substance to become so in form, and that while it did not compel them to continue to carry oil, it required them not to continue to carry oil except as common carriers.[11] In the same
216 decision the Supreme Court held that the Uncle Sam Oil Company, although it operated a pipe line through which it transported its own oil, drawn from its own wells, across a state line to its refinery for processing at the refinery, was beyond the reach of the amendment because it was not engaged in the transportation of oil as a common carrier within the purview of the amendment.

And in Valvoline Oil Co. v. United States, 308 U. S. 141, in distinguishing its operation from that of the Uncle Sam Oil Company, the court said:

> "But that company's (The Uncle Sam Oil Company) pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be transportation under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline."

In the Valvoline case the interpretation of the Hepburn Act of 1906 in the Pipe Line Cases was held to have been carried into the Act, as amended in 1920, despite certain changes in language.

217 If Champlin, in response to the Commission's order, should publish and file tariff schedules showing its rates and charges for interstate transportation of refined petroleum products between different points on its pipe line, that would constitute an implied invitation to the public to tender petroleum products for transportation by Champlin's pipe line and would convert it from a carrier solely of its own products into a common carrier of products of others, for hire.

The question whether Congress, acting through the Commission, may thus convert a private pipe line into a public utility and require a private carrier to become a public carrier without violating the due process clause of the Fifth Amendment was not involved in Champlin Refining Co. v. United States *et al.*, 329 U. S. 29. The court there said:

> "Appellant further contends that, as so construed, the Act exceeds the commerce power of Congress and

[11] 234 U. S. 560, 561.

218 violates the due process clause of the Fifth Amendment because, it is argued, this interpretation converts a private pipe line into a public utility and requires a private carrier to become a common carrier. But our conclusion rests on no such basis and affords no such implication. The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier. This power has yet been invoked only to the extent of requiring Champlin to furnish certain information as to facilities being used in interstate marketing of its products. The commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier."

And in Valvoline Oil Co. v. United States, 308 U. S. 141, 146, the court said

"Appellant presses its argument beyond the question whether it comes under the Act. If it does, it urges, the Act is in violation of the due process clause in that by the involuntary change of status from private to common carrier its property is taken. It looks upon
219 the various regulatory provisions of the Interstate Commerce Act as inseparable from the valuation provisions of § 19a(a) and (e). The losses feared, from present or future legislation other than the valuation provisions, may never occur. The data required by the present order may never be used to fix rates. No such information as to other pipe lines has been so used. Publicity alone may give effective remedy to abuses, if any there be. This legislation was intended to free interstate commerce in oil from practices believed to be detrimental, and in that connection accessibility of valuation information to the Congress is essential. Its separate significance being apparent we confine ourselves to § 19A(a) and (e).

In the prior action the question involved was whether the Commission could require Champlin to furnish certain information under § 19a of the Interstate Commerce Act, which the Supreme Court held could be required of a private carrier. Compliance with the order here involved would convert Champlin into a common carrier for hire. The power to regulate a private carrier in interstate commerce is one thing, but the power to compel a private carrier either to cease its operations as such, or to become a common carrier and to carry the goods of others for hire is quite a different thing.

We are of the opinion that Congress did not intend § 1 of the Hepburn Act and § 400 of the Transportation
220 Act of 1920 to subject carriers of oil by pipe line, who carry only their own products and who are not, at least, common carriers in substance, to regulations requiring them to transport the products of others as common carriers for hire. Here, Champlin transports its own petroleum products through its pipe line to storage tanks at the three terminal points. It has never transported products belonging to any other person, firm or corporation. It markets its products only after they have come to rest in such storage tanks, and in certain instances after additional processing. It retains title to such products until the sale thereof from its bulk storage tanks at one of the terminals. It has never made a sale on condition that the product sold would be shipped by means of its pipe line. Of course, the products have a greater sale value at the terminal points than they would have f. o. b. the refinery, because if the purchaser bought at the refinery he would have to incur the cost of transportation to his place of business and deliveries can be made to the purchaser with greater
221 expedition and convenience from the terminal points. Naturally, the cost of transportation to some extent is reflected in the selling prices at the terminal points, but the selling prices at such points are not the Enid f. o. b. price, plus the cost of transportation. They are determined by the prices in a competitive market and are prices that enable Champlin to sell its products in competition with other marketers of petroleum products. Champlin is not a common carrier, either in fact or in substance.[12]

In the Pipe Line Cases, Standard and its affiliates enjoyed a monopoly and compelled, as a condition of transportation, other producers of oil to sell to them at their prices, but they carried everybody's oil. Here, Champlin enjoys no monopoly, transports its own products,
222 and after they have come to rest in storage tanks at terminal points, sells them, not at prices dictated by it, but at prices compelled by competition in the market. It supplies a very small percentage of the gasoline consumed in the area. Its acts create competition and do not enable it to foster or enjoy a monopoly.

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[12] Cf. Pennsylvania Railroad Co. v. Public Utilities Commission of Ohio, 298 U. S. 170;
Pennsylvania R. Co. v. Pittsburgh, L. & W. R. Co., 6 Cir., 83 F. 2d 861.

We conclude that Champlin is not in substance a common carrier of petroleum products and may not be required to construct receiving facilities and delivery facilities and carry the petroleum products of others as a common carrier for hire, or cease operation of its pipe line, and that to hold otherwise would be to take its property without due process of law, in violation of the Fifth Amendment.[13]

223 *Dissenting Opinion*

MURRAH dissenting:

In the former case, 59 Fed. Supp. 978, we held the identical operations of this plaintiff within the jurisdiction of the Interstate Commerce Commission as a statutory "common carrier engaged in the transportation of oil * * * by pipe line" under Section 1 of the Interstate Commerce Act, as amended. We accordingly sustained the jurisdiction of the Commission to require the plaintiff to furnish valuation reports under Section 19(a) of the Act.

Our decision was affirmed in Champlin v. United States, 329 U. S. 29, the Court specifically holding that "Champlin's operation is transportation within the meaning of the Act, and that the statute supports the Commission's order to furnish information."

There is no actual difference in this case and the former, and in my judgment, it should be affirmed on the authority of that case.

224 If the Commission is authorized to require Champlin to comply with the provisions of Section 19(a) of the Act as a common carrier subject to the Act, I can see no justifiable basis for denying jurisdiction to require compliance with Sections 20 and 6 of the same Act. In either case, jurisdiction of the Commission over Champlin as a common carrier, subject to the provisions of the Act, is an indispensable prerequisite to the exercise of its asserted authority. If it has jurisdiction under one Section of the Act, it assuredly has jurisdiction under the other.

The only suggested distinction between this case and the former is that Champlin has now abandoned the price deferentials between F. O. B. refinery and the terminal points. The deferentials in the former case were intended to reflect the railroad transportation charges between the refinery and the terminals. But in any event, the prices F. O. B. refinery fluctuated to meet competitive prices at the terminal.

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[13] Producers Transportation Company v. Railroad Commission of the State of California, 251 U. S. 228, 230, 231.

Now Champlin has adopted the more realistic method of posting prices at each terminal, with allowances to meet the competitive market price. The result is no different—in each case the transportation cost is an indispensable factor in the price structure.

225 There is nothing in the order of the Commission which has the effect of requiring Champlin to convert its private pipe line into a common carrier in fact. Certainly there is nothing in the order requiring Champlin to provide new inlets or outlets, or for that matter, to make any structural or operational changes in its system whatsoever.

Although the importance of this Regulation of the Interstate Commerce Commission may not be manifest on the facts of this record, the asserted authority of the Commission undoubtedly bears a permissible relationship to interstate transportation of oil commodities from point of production to points of consumption.

I would sustain the jurisdiction of the Commission and dismiss the action.

(File Endorsement Omitted)

293 In United States District Court

Findings of Fact—Filed August 28, 1950

In compliance with Rule 52(a), Rules of Civil Procedure, the Court makes and files the following findings of fact and separately states the controlling conclusions of law in this action.

1. Plaintiff Champlin Refining Company (hereafter called Champlin) is a private corporation, incorporated under the laws of the State of New Mexico. It owns and operates a crude oil refinery located at Eind, Oklahoma, by means of which it reduces crude petroleum to gasoline, kerosene, fuel oil and other products. In connection with its refinery and as a part of its operation, Champlin owns and operates a six inch pipe line extending from its refinery to storage tanks owned by Champlin and located at or near Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa.

2. On June 13, 1949, the Interstate Commerce Commission made an order that Champlin be required "to file with the * * * Commission annually, periodical, or special reports as required by the provisions of paragraphs (1) and (2) of Section 20 of the Interstate Commerce Act * * * and

the orders and regulations of the * * * Commission made pursuant thereto"; "to institute and henceforth maintain a uniform system of accounts applicable to pipe lines,
294 as required by the provisions of paragraphs (3), (4) and (8) of Section 20 of the Interstate Commerce Act * * * and the orders and regulations of the * * * Commission made pursuant thereto"; and "to publish and file tariff schedules showing the rates and charges for interstate transportation of refined petroleum products between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established, upon notice to" the Commission and the general public "by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act."

This order was directed against Champlin in the operation of the above mentioned pipe line and this suit was brought to enjoin the Interstate Commerce Commission from enforcing the above described orders and for and adjudication that said orders are invalid.

3. Champlin uses the above described pipe line exclusively to move its gasoline, kerosene, tractor fuel and burning oil from its refinery at Enid to its storage tanks at Hutchinson, Superior and Rock Rapids. The movement is an incident to the manufacture or refining of such products.

The products so moved are discharged from the pipe line into Champlin's said storage tanks. Champlin has always done some blending and treating of such products, after the same come to rest in such storage tanks, which necessarily has an effect on their quality. At the time of the trial, Champlin was constructing Ethyl plants at or near the Superior and Rock Rapids storage tanks for use in further treating and preparing for sale gasoline stored at those terminals.

4. At each of the three terminals Champlin maintains loading racks which are used by Champlin to make delivery of products from such storage tanks to purchasers.

295 5. Champlin uses the entire capacity of its pipe line on a full time basis in moving the products of its refinery to storage. The pipe line is what is known in the industry as a products line and is a plant facility.

6. Champlin is the manufacturer and sole owner of all of the products moved through its pipe line. The bulk of the products of Champlin's refinery is moved by means of this

private pipe line to the above described storage facilities at the three points mentioned. Champlin uses the pipe line exclusively for the movement of its own products; it has never moved products belonging to any other person, firm or corporation, or moved products for any other person, firm or corporation, and it has never proffered the service of its line to any other person, firm or corporation.

7. Champlin has never exchanged products moved through its pipe line for products of any other manufacturer or marketer of petroleum products, or for any other commodity of any other person.

8. Champlin has never filed any tariff schedules or rates with the Interstate Commerce Commission or with any state regulatory agency, or assumed or exercised the right of eminent domain in connection with its pipe line.

9. Champlin markets the products that have been moved through its pipe line only after they have come to rest in storage tanks at the three named places and in instances of some products only after there has been an additional processing.

10. Champlin is at all times the sole owner of all products in its line and in its storage tanks at Hutchinson, Superior and Rock Rapids; and Champlin continues as such owner until the products are sold and delivered to purchasers from the storage tanks through Champlin's loading facilities.

11. All products which have been moved by means
296 of the pipe line were manufactured by Champlin and belonged to Champlin, and Champlin in all instances retained title thereto, until sales were later made from the bulk storage tanks in which the products had come to rest after the pipe line movement. In no instance has Champlin made a sale on the condition that the products sold would be moved by means of the pipe line or contracted for the use of the pipe line as a means of making delivery of any petroleum products. At no time have any products been placed in the line consigned to or destined for any particular purchaser.

12. Champlin transports through its pipe line to its storage tanks at Hutchinson, Superior and Rock Rapids, substantially all of the products of its refinery at Enid and sells these products from its storage tanks at said places. Champlin uses the capacity of this pipe line in moving these products to its marketing territory in and around Hutchin-

son, Superior and Rock Rapids, and the pipe line constitutes the only means by which Champlin can move its products to its said marketing territory on an equal marketing basis with its larger and more powerful competitors. If Champlin were compelled to share its pipe line with its competitors, the result would be to deny to Champlin access to a market upon which Champlin's continuing in business depends.

13. Champlin's pipe line has no connection with any other pipe line, and there is no point at which any petroleum product can be put into the line other than at the Enid refinery; and there is no point at which any products can be taken out of the line except at the storage tanks at Hutchinson, Superior and Rock Rapids. It would require the construction of additional facilities to enable Champlin to take into its pipe line the products of any other person.

14. Delivery of the products to purchasers at the three terminals is made at the storage tanks by means of loading racks and in no instance has any delivery of products
297 been made directly from the pipe line.

15. None of the products moved through Champlin's pipe line has ever been acquired by Champlin by purchase from any other person, firm or corporation.

16. For some years prior to 1935, the business of Champlin showed a steady decline because of the construction of refineries in areas near Champlin's markets, and because of the movement of petroleum products into those areas by means of products pipe lines, barge lines and transport trucks. To enable Champlin to compete with others in marketing of its products, it constructed the pipe line. Use of the pipe line in moving its products to market is necessary to enable Champlin to hold its position in the market which it serves, and to survive as a competitor in the market.

17. At the time of the trial of the prior case (*Champlin Refining Company vs. United States, et al.*, 59 Fed. Supp. 978, 329 U. S. 29), there was involved in Champlin's marketing system a factor which for convenience was referred to as the "differential", being a sum added to the sale price of products f.o.b. the Enid refinery. The amount to be so added was determined by competitive prices in the marketing areas and was a device for meeting competitors' prices. The differential was a sum, which when added to the sale price at the Enid refinery, resulted in a sale price f.o.b. the pipe line terminals, that enabled the purchaser to

move the products from the storage tanks, where he made his purchase, to his place of business by means of his own choice, with a total resulting cost to him that did not exceed the sum for which he could have bought such products from Champlin's competitors, delivered to the purchaser's place of business. Sometimes, but not always, depending upon competitive prices, the differential would
298 equal or approximate the difference between the cost of the through freight haul from the Enid Refinery to the purchaser's place of business, less the cost of the local freight haul from the storage tanks to the purchaser's place of business. However, the differential varied constantly, depending upon the price at which competitors in the market territory were selling like products. Competitive prices, and not the cost of transportation or freight charges, determined the amount of differential. Any relation between the differential and the cost of transportation was incidental, because the controlling factor in arriving at the amount of differential was the price at which the stronger marketers in the market territory offered their products for sale. On May 10, 1948, (before the promulgation of the order here involved) Champlin abandoned the differential method of pricing. In lieu of that method Champlin has adopted the policy of posting prices at each of its terminals. Where competitive marketing conditions require it, Champlin makes allowances from the posted prices so that purchasers in such instances buy below the posted prices and thus Champlin meets the competitive market prices in the sale of its products. The allowance range from 1/8th cents to 1 1/8ths cents per gallon.

The allowance enables Champlin to put its products on the market in competition with other stronger marketers in the area.

On May 10, 1948, the change in pricing method from "differential" to posted pricing reflected net increases or decreases of from 1/8 cent to 1/2 cent per gallon, at more than 70 per cent of the destinations served by Champlin out of its storage tanks at Superior and Rock Rapids. A change of 1/8 cent per gallon, or more, is recognized in the industry as substantial.

18. Competitive prices in the area are the sole basis for Champlin's prices.

299 19. No pipe line transportation charge is made either directly or indirectly to any purchaser of Champlin's product. No charge of any kind for trans-

portation is stated in any invoice and no provision for transportation charge is provided in any contract made by Champlin for the sale of its products. Champlin does not change its price structure because of increase or decrease in cost of operating its products pipe line.

20. No refiner of petroleum products other than Champlin is dependent on the Champlin line as an outlet to the markets. Common carrier pipe line transportation is available to any other refiner in this area desiring such service. The capacity of Champlin's pipe line is 9800 barrels per day, as against common carrier pipe line capacity of 172,800 barrels per day available to refiners in Oklahoma and Kansas. Champlin pipe line capacity is only approximately 5 per cent of the total products pipe line capacity servicing Superior; and only 7 per cent of the total products pipe line capacity serving Rock Rapids. It is the smallest pipe line serving the territory.

21. No purchaser of refined products is dependent upon the Champlin pipe line as a source of supply. There are 86 wholesale outlets in the trade territory served by Champlin, distributing the products of 28 refineries. Every purchaser or prospective purchaser of Champlin products in this trade territory has available to him the products of these many marketers that are competing with Champlin in the sale of petroleum products. Purchasers of Champlin products buy in a competitive market and are free to sell at prices over which Champlin does not have any control. For the six months period immediately prior to the institution of the proceedings by the Commission which resulted in this action, only 1.98% of all of the gasoline consumed in the area served by the Champlin pipe line was moved through its pipe line and sold from its
300 storage facilities.

22. If Champlin were forced to open its line to the public, its competitors could make tenders to the extent that Champlin would be deprived of any use of its pipe line, and thereby of its means of access to the market upon which Champlin depends. Twenty-three refineries (having a combined refining capacity of 365,000 barrels of crude oil per day) make deliveries of petroleum products into Champlin's trade territory through two common carrier pipe lines, one of which with more than 4 times the capacity of the Champlin line, crosses the Champlin line near Hutchinson, Kansas. Three of these refiners market petroleum products in Southwest Nebraska in

quantities equalling more than 27% of the Champlin pipe line capacity in that area. These three companies could use a substantial part of Champlin's pipe line capacity and the additional 20 refiners above referred to could make tenders in excess of the total capacity of the Champlin line.

23. Champlin is what is known in the industry as an independent company. It is a small company in comparison with companies with which it competes in the area reached by its pipe line. It occupies such a relatively minor place in the gasoline market in the middle west that it is in no position to control the price of gasoline, kerosene, tractor fuel or burning oil, either by raising or lowering the price thereof; it is in no position to support price advances by its competitors or to survive price cutting by its competitors. Champlin does not have a monopoly or any power to establish a monopoly either in the transportation of petroleum products into the trade territory or in the sale of petroleum products therein, Champlin's acts create competition.

301 24. Champlin is not in fact a common carrier.

FOR THE COURT
ORIE L. PHILLIPS
Judge, The United States Court of Appeals, the Tenth Circuit

EDGAR S. VAUGHT
Judge, The United States District Court, The Western District of Oklahoma.

Aug. 28, 1950.
Endorsed:

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CONCLUSIONS OF LAW

1. Congress did not intend by Section 1 of the Repburn Act, as amended by Section 400 of the Transportation Act of 1920 (41 Stat. 474) to subject carriers of oil by pipe line, who carry only their own products and are not common carriers either in fact or in substance, to regulations requiring them to transport the products of others as common carriers for hire.

2. Champlin is not a common carrier, either in fact or in substance.

3. Champlin does not enjoy a monopoly in the transportation of the products of crude petroleum into the areas

reached by its pipe line; or a monopoly in the sale of petroleum products in those areas.

4. Champlin is not so engaged in the transportation of petroleum products by pipe line within the meaning of Section 1 of the Interstate Commerce Act, as amended by Section 400 of the Transportation Act of 1920 (41 Stat. 474), that the Commission may require it to transport petroleum products for others as a common carrier for hire.

5. Although Champlin's operations may fall within the literal language of Section 1 of the Interstate Commerce Act, as amended by Section 400 of the Transportation Act of 1920 (41 Stat. 474), to construe the statute literally and to apply it to Champlin's pipe line would have the
303 result to force Champlin, against its will to devote its property, heretofore used only for its private purposes, to a public use.

6. If Champlin were required to file and publish schedules showing rates and charges for interstate transportation of petroleum products as directed by the order of the Interstate Commerce Commission, the filing of such schedules would constitute an offer on the part of Champlin to the public to transport through the facilities of its now private pipe line the commodities of other persons, and an implied invitation to the public to tender petroleum products for transportation by Champlin through its pipe line; and to require Champlin to file such schedules would force Champlin to convert its pipe line operations from that of a carrier solely of Champlin's own products, into that of a common carrier of products of others for hire.

7. The order of the Commission is not supported by either the evidence before the Commission, nor by the law.

8. Compliance with the order here involved would convert Champlin into a common carrier for hire.

9. Champlin is not, in substance, a common carrier of petroleum products; and may not be required by order of the Commission to construct receiving facilities and delivering facilities, and to carry the petroleum products of others as a common carrier for hire, or cease operation of its pipe line.

10. To enforce the order of the Interstate Commerce Commerce Commission requiring Champlin to file and publish schedules showing rates and charges for interstate transportation of refined petroleum products, would be to violate

the Fifth Amendment to the Constitution of the United States.

Aug. 28, 1950.

For the Court
ORIE L. PHILLIPS
Judge, The United States Court of Appeals, the Tenth Circuit

EDGAR S. VAUGHT
Judge, the United States District Court, the Western District of Oklahoma

(File Endorsement Omitted)

304 In United States District Court

Decree—Filed August 28, 1950

The above case came on for hearing on the 19th day of November, 1949, whereupon came the parties by their respective counsel and announced ready for trial; and, the pleadings, evidence and argument of counsel having been submitted, the Court took the cause under advisement, and upon due consideration, on July 10, 1950, announced its decision in favor of Plaintiff and against Defendant and Intervener:

IT IS NOW ORDERED, ADJUDGED and DECREED that the order of the Interstate Commerce Commission entered on the 13th day of June, 1949, in Cause No. 29,912, *Champlin Refining Company Accounts and Reports*, and in Cause No. 29,912 (Sub.—*No. 1) Champlin Refining Company Tariffs*, copy of which order is attached to Plaintiff's complaint, is invalid and should not be enforced against Plaintiff; and the Interstate Commerce Commission, its servants, agents and employees are perpetually enjoined from enforcing or attempting to enforce said order against Plaintiff in the operation of its petroleum products pipe line, and
305 the cross-complaint of Intervener Interstate Commerce Commission is dismissed. All costs accrued in this action are taxed against the Defendants.

ENTERED this the 28th day of August, 1950.

FOR THE COURT
ORIE L. PHILLIPS
Judge, the United States Court of Appeals, the Tenth Circuit

EDGAR S. VAUGHT
Judge, the United States District Court, the Western District of Oklahoma

(File Endorsement Omitted)

306 In United States District Court

Petition for Appeal—Filed October 25, 1950

The United States of America and Interstate Commerce Commission, defendants in the above-entitled cause, feeling themselves aggrieved by the final decree and order of this Court entered on August 28, 1950, pray an appeal from said decree to the Supreme Court of the United States.

The particulars wherein said defendants consider the decree erroneous are set forth in the Assignments of Errors accompanying this petition, to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated October 25, 1950.

/s/ Wm. Amory Underhill
WILLIAM AMORY UNDERHILL
Acting Assistant Attorney General

/s/ William D. McFarlane
WILLIAM D. McFARLANE
Special Assistant to the Attorney General

/s/ Robt. E. Shelton
ROBERT E. SHELTON
United States Attorney
For the United States of America

/s/ Daniel W. Knowlton
DANIEL W. KNOWLTON
Chief Counsel
Interstate Commerce Commission

/s/ H. L. Underwood
H. L. UNDERWOOD
Assistant Chief Counsel
Interstate Commerce Commission
For the Interstate Commerce Comm.

(File Endorsement Omitted)

307 In United States District Court

Order Allowing Appeal—Filed October 25, 1950

The United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, having made and filed a petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in said cause entered on August 28, 1950, and having also made and filed an assignment of errors, and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such case made and provided.

IT IS ORDERED AND DECREED, That the said appeal be, and the same is hereby, allowed as prayed for.

Dated October 25, 1950.

/s/ EDGAR S. VAUGHT
United States District Judge.

(File Endorsement Omitted).

308 In United States District Court

Citation on Appeal—Filed Oct. 25, 1950

To: CHAMPLIN REFINING COMPANY

Greetings:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, on the 4 day of December, 1950, pursuant to an order filed and entered in the office of the United States District Court for the Western District of Oklahoma, allowing an appeal from a decree, entered August 28, 1950, in the above-entitled cause, to show cause, if any there by, why said decree rendered against defendants should not be reversed and set aside and why justice should not be done in behalf of said defendants, the United States of America and the Interstate Commerce Commission.

Dated, October 25, 1950.

EDGAR S. VAUGHT
United States District Judge

(File Endorsement Omitted)

300 In the United States District Court

(Title Omitted)

Order Extending Time Within Which to Docket Appeal—Filed Nov. 30, 1950

IT IS THIS DAY ORDERED, for good cause shown, that the time within which the United States of America and Interstate Commerce Commission, appellants herein, may docket and file transcript of record on appeal in the Supreme Court of the United States, be and the same is hereby extended to and including December 14, 1950.

Dated this 30th day of November, 1950.

EDGAR S. VAUGHT
United States District Judge

(File Endorsement Omitted)

329 In United States District Court

Notice of Appeal—Filed Oct. 25, 1950

To: CHAMPLIN REFINING COMPANY.

Please take notice that, pursuant to the statutes and rules of court in such case made and provided, the United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, hereby appeal to the Supreme Court of the United States from the final order and decree of the United States District Court for the Western District of Oklahoma, made and entered August 28, 1950, setting aside the orders of the Commission of June 13, 1949, in Docket No. 29912, directing the Champlin Refining Company to file reports with the said Commission and to institute and maintain a uniform system of accounts applicable to pipe lines; and to publish and file tariffs showing its rates and charges for interstate transportation of refined petroleum products, in Docket No. 29912 (Sub-No. 1).

Dated, October 25, 1950.

/s/ WM. AMORY UNDERHILL
William Amory Underhill
Acting Assistant Attorney General

/s/ WILLIAM D. MCFARLANE
William D. McFarlane
Special Assistant to the Attorney General

/s/ ROBT. E. SHELTON
Robert E. Shelton
United States Attorney,
For the United States of America

/s/ DANIEL W. KNOWLTON
Daniel W. Knowlton
Chief Counsel
Interstate Commerce Commission

/s/ H. L. UNDERWOOD
H. L. Underwood
Assistant Chief Counsel
Interstate Commerce Commission
For the Interstate Commerce Comm.

330 In United States District Court

Assignment of Errors—Filed October 25, 1950.

Now comes the United States of America and the Interstate Commerce Commission, defendants in the above-entitled cause, and in connection with their appeal herein, file the following assignment of errors upon which they will rely in their prosecution of said appeal to the Supreme Court of the United States from the final decree of the District Court dated August 28, 1950.

The District Court erred:

1. In holding and concluding that Champlin Refinery Company is not a common carrier by pipe line within the purview of Section 1(3) (a) of the Interstate Commerce Act (49 U. S. C. 1 (3) (a)).

2. In holding and concluding that Champlin Refining Company was not required to comply with the order of the Interstate Commerce Commission, entered June 13, 1949, in a proceeding before the Commission, directing that it file with the Commission annual, periodical or special reports as required by Section 20 of said Act, and the orders and regulations of the Commission made pursuant thereto, and to institute and to maintain a uniform system of accounts applicable to pipe lines as required by said section and the orders and regulations of the Commission thereunder.

3. In holding and concluding that Champlin Refining Company was not required to comply with the order of the Commission, entered June 13, 1948, in a proceeding before

it, directing that it publish and file tariff schedules of rates and charges for interstate transportation of refined petroleum products between points on its own route and points on the route of any other carrier by railroad, pipe line or by water when a through route and joint rate have been established, pursuant to Section 6 of the said Interstate Commerce Act (49 U. S. C. 6).

331 4. In holding and concluding that the Interstate Commerce Commission was without jurisdiction over the Champlin Refining Company in respect to its pipe-line operations.

5. In holding and concluding that the said orders of the Interstate Commerce Commission were invalid and in setting them aside.

6. In holding and concluding that none of the products moved through Champlin's pipe line has ever been acquired by Champlin by purchase from any other person, firm or corporation.

7. In not holding and concluding that the Champlin Refining Company is a common carrier by pipe line under Section 1(3)(a) of the Interstate Commerce Act (49 U. S. C. 1(3)(a)), and is subject to the jurisdiction of the Interstate Commerce Commission in respect of the requirements made by the Commission which are here involved.

8. In not holding and concluding that the orders of the Interstate Commerce Commission, challenged in this cause, were valid and within the authority conferred upon it.

9. In holding and concluding that enforcement of the order of the Commission requiring Champlin to file reports and institute and maintain a system of accounts; and of the order requiring Champlin to publish schedules of rates and charges for interstate transportation of refined petroleum products, would violate the Fifth Amendment to the Constitution of the United States.

10. In holding and concluding that the proposed findings of fact and conclusions of law submitted by the United States and the Interstate Commerce Commission were erroneous, and that the proposed findings of fact and conclusions of law submitted by Champlin were correct.

11. In holding and concluding that Champlin was not engaged in transportation and commerce within the meaning of the Act and thus required to comply with the provisions of the Commission's orders requiring Champlin to file reports and to publish tariffs.

12. In not entering a decree dismissing the complaint Dated October 25, 1950.

/s/ Wm. Amory Underhill
William Amory Underhill
Acting Assistant Attorney General,

332 /s/ William D. McFarlane
William D. McFarlane
Special Assistant to the Attorney General.

/s/ Robt. E. Shelton
Robert E. Shelton
United States Attorney,
For the United States of America.

/s/ Daniel W. Knowlton
Daniel W. Knowlton
Chief Counsel
Interstate Commerce Commission

/s/ H. L. Underwood
H. L. Underwood
Assistant Chief Counsel,
Interstate Commerce Commission,
For the Interstate Commerce Commission.

(File Endorsement Omitted)

333 In United States District Court

Docket Entries

Sept. 7, 1949	Filed complaint—2:50 P. M.
Sept. 7, 1949	Filed prae. for and issued summons.
Sept. 7. 1949	Filed affidavit of plaintiff in support of application for temporary restraining order.
Sept. 7, 1949	3:10 P. M. Filed and ent. temporary restraining order v. United States from enforcing order of ICC dated June 13, 1949, until hearing and determination herein. (Vaught)
Sept. 12, 1949	Filed summons: "Served defendant by copy with Robert E. Shelton, United States Attorney, on September 12, 1949, at Okla. City, Okla., and by mailing by registered mail two copies of the within

	writ, to the Attorney General of The United States of America at Washington, D. C, receipt number 45919.
Sept. 12, 1949	Filed certified copy of restraining order: "Served defendant by copy with Robert E. Shelton, United States Attorney, on September 12, 1949, at Oklahoma City, Okla., and by mailing by registered mail two copies of the within writ, to the Attorney General of the United States of America, at Washington, D. C., receipt number 45919.
Sept. 14, 1949	Filed Order convening three Judge Court on application of plaintiff consisting of Honorable Orie L. Phillips, Chief Judge and Honorable Alfred P. Murrah, Judge, U. S. Court of Appeals, Tenth Circuit, and Honorable Edgar S. Vaught, U. S. District Judge, for purpose of hearing and determining said application. (Judge Phillips)
Oct. 28, 1949	Filed intervention of Interstate Commerce Commission.
Oct. 28, 1949	Filed answer of Interstate Commerce Commission, with cert. of service.
Nov. 3, 1949	Ent. order assigning cause for hearing before Judge Phillips, Judge Murrah and Judge Vaught in Oklahoma City, Okla. on Saturday, Nov. 19, 1949—10 A. M. (Vaught)
Nov. 10, 1949	Filed order granting deft. add'l time, to and including Nov. 16, 1949, to answer. (Vaught)
Nov. 10, 1949	Filed deft's Answer—with service.
Nov. 18, 1949	Filed transcript of proceedings before Interstate Commerce Commission (In five parts) (Original in one volume).
Nov. 19, 1949	Filed brief for Interstate Commerce Commission, intervening deft.
Nov. 19, 1949	Ent. record of trial. Plff. introduces documentary proof and counsel for plff. and deft. make statements to the Court. The hour of adjournment having arrived, the further trial is continued to Nov. 21, 1949, 9:00 A. M. (Phillips, Murrah, Vaught)

Nov. 21, 1949	Ent. further record of trial. Counsel for all parties conclude statements and file briefs. Cause submitted to the Court for determination upon the evidence and statements of counsel and briefs now on file. (Phillips, Murrah, Vaught)
Nov. 21, 1949	Filed briefs of United States.
Nov. 21, 1949	Filed Argument of Harry O. Glasser for plff.
334 Nov. 21, 1949	Filed Argument of Dan Moody, for plff.
Dec. 1, 1949	Filed express bill record to Judge Phillips, Nov. 21, 1949 ($2.58).
Dec. 16, 1949	Ent. Order granting United States ten days from this date answer supplemental brief of plaintiff. (Vaught)
Dec. 27, 1949	Ent. Order granting United States 10 days additional within which to file supplemental brief. (Vaught)
Jan. 3, 1950	Filed answer to plaintiff's memorandum citing decisions of the Commission in the Lenoir Chair Company application and Schenley Distillers Corporation application, with proof of service. (Carbon copy filed)
Jan. 27, 1950	Filed motion of plaintiff for permission to file attached memorandum brief in response to reply brief of deft., United States. "Leave granted O. L. P."
Feb. 6, 1950	Filed motion of defendant to deny plaintiff's motion for leave to file memorandum brief, motion to strike and answer of Interstate Commerce Commission.
July 12, 1950	Filed Opinion by three-Judge Court (Phillips and Vaught holding that Champlin is not in substance a common carrier of petroleum products and may not be required to construct receiving and delivery facilities and carry petroleum products of others as a common carrier for hire, or cease operation of its pipe line, and that to hold otherwise would be to take its property without due process of law, in violation of the 5th Amendment.) (Murrah dissenting—would sustain the jurisdiction of the I. C. C. and dismiss the action)

Aug.	4, 1950	Ent. order for hearing on findings of fact and conclusions of law, Monday, August 28, 1950, 10:00 A. M. (Vaught)
Aug.	28, 1950	Filed Findings of Fact adopted by Judge Phillips and Judge Vaught. (Judge Murrah dissents)
Aug.	28, 1950	Filed Conclusions of Law adopted by Judge Philips and Judge Vaught. (Judge Murrah dissents)
Aug.	28, 1950	Ent. order settling findings of fact and conclusions of law adopted by Judge Phillips and Judge Vaught. Judge Murrah dissents and announces that he would adopt the findings and conclusions submitted by the Government and the Commission as supplementary to the findings heretofore made by the Commission; all as shown by the Reporter's transcript.
Aug.	28, 1950	Filed and Ent. Decree that Order of I. C. C. entered June 13, 1949 in Cause No. 29,912 is invalid; and enjoining the Interstate Commerce Commission from enforcing said order against plff. herein; and dismissing cross-complaint of intervenor Interstate Commerce Commission; all at cost of defendant. (Judges Phillips and Vaught)
Aug.	31, 1950	Ent. order granting defendants an extension of ten days from this date within which to file proposed findings of fact and conclusions of law. (Vaught)
Aug.	31, 1950	Filed Requested Findings of Fact and Conclusions of Law of deft. United States.
Oct.	25, 1950	Filed petition for appeal.
Oct.	25, 1950	Filed notice of appeal.
Oct.	25, 1950	Filed citation on appeal to Supreme Court in the City of Washington, D. C., Dec. 4, 1950. (Due in Washington 12-4-50)
Oct.	25, 1950	Filed order allowing appeal. (Vaught)
335 Oct.	25, 1950	Filed assignment of errors.
Oct.	25, 1950	Filed statement as to jurisdiction.
Oct.	25, 1950	Filed statement directing attention to paragraph 3 of Rule 12 of the revised

Rules of the Supreme Court of the United States.

Oct. 25, 1950 Filed order that documents and papers in evidence, stenographers transcript be forwarded in lieu of copies of such papers to Clerk of Supreme Court of U. S. as part of transcript of record on appeal.

Oct. 25, 1950 Filed prae. for transcript of record on appeal.

Oct. 25, 1950 Filed certificate of service of notice of appeal, petition for appeal, assignment of errors, statement as to jurisdiction, statement directing attention to Rule 12(3) of Rules of Supreme Court, order allowing appeal, citation, praecipe and order as to exhibits.

336 In the United States District Court

Order as to Exhibits—Filed Oct. 25, 1950

In accordance with the provisions of defendants' praecipe for transcript of the record on appeal of the above-entitled cause to the Supreme Court of the United States:

It is Hereby Ordered, That the documents and papers received in evidence in the hearing of this cause; and the stenographer's transcript of the proceedings, including the argument, before the three-judge court, may all be forwarded, in lieu of copies of such documents and papers, to the Clerk of the Supreme Court of the United States as a part of the transcript of the record on the appeal herein.

Dated October 25, 1950.

/s/ Edgar S. Vaught
United States District Judge.

(File Endorsement Omitted)

337 In United States District Court

Praecipe for Transcript of Record—Filed Oct. 25, 1950

The Clerk will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include therein:

1. Complaint, including Exhibit A thereto.

2. Answer of the United States.
3. Intervention of the Interstate Commerce Commission.
4. Answer of the Interstate Commerce Commission.
5. Order setting case for hearing.
6. Stenographer's transcript of proceedings and argument before the Court on November 19 and 21, 1949.
7. Opinions of Court (majority and dissenting).
8. Proposed findings of fact and conclusions of law of United States and Interstate Commerce Commission.
9. Objections on behalf of defendants United States and Interstate Commerce Commission to proposed findings of fact and conclusions of law presented on behalf of plaintiff.
10. Stenographer's transcript of the proceedings on the hearing before the three-judge court, on the proposed findings of fact and conclusions of law, held August 28, 1950.
11. Findings of fact and conclusions of law, filed August 28, 1950.
12. Decree setting aside requirements of Interstate Commerce Commission, and enjoining enforcement thereof, filed August 28, 1950.
13. Petition for appeal of United States and Interstate Commerce Commission, filed October 25, 1950.
14. Order allowing appeal, filed October 25, 1950.
15. Citation on appeal, dated October 25, 1950.
338 16. Statement to appellee pursuant to paragraph 2, Rule 12 of the Rules of the Supreme Court.
17. Jurisdictional statement.
18. Notice of appeal.
19. Record in Interstate Commerce Commission's Docket, No. 29912 and 29912 (Sub. No. 1) of testimony and exhibits presented in hearings in said proceedings and as introduced in the District Court, certified to by the Secretary of the Interstate Commerce Commission.
20. Assignment of errors.
21. All docket entries in case Civil No. 4562.
22. Order as to exhibits.
23. This designation.

/s/ Wm. Amory Underhill
William Amory Underhill
Acting Assistant Attorney General,

332 /s/ WILLIAM D. MCFARLANE
William D. McFarlane
Special Assistant to the Attorney General

/s/ ROBT. E. SHELTON
Robert E. Shelton
United States Attorney
For the United States of America

/s/ DANIEL W. KNOWLTON
Daniel W. Knowlton
Chief Counsel
Interstate Commerce Commission

/s/ H. L. UNDERWOOD
H. L. Underwood
Assistant Chief Counsel
Interstate Commerce Commission
For the Interstate Commerce Commission

(File Endorsement Omitted)

339 In United States District Court

Certificate of Service—Filed Oct. 25, 1950

I certify that copies of the following papers have been served by mail this date, October 25, 1950, upon Harry O. Glasser, Esq., 305 Knox Building, Enid, Oklahoma and Dan Moody, Esq., of Austin, Texas, counsel for appellee in the above case:

Notice of Appeal
Petition for Appeal
Assignment of Errors
Statement as to Jurisdiction
Statement Directing Attention to Rule 12(3) of the Rules of the Supreme Court of the United States
Order Allowing Appeal
Citation
Praecipe
Order as to Exhibits

/s/ ROBT. E. SHELTON
Robert E. Shelton
United States Attorney

(File Endorsement Omitted)

343 In United States District Court

Order to Transmit Original Exhibits—
Filed Nov. 8, 1950

For good cause shown, it is hereby ordered

That the Clerk shall transmit to the Clerk of the Supreme Court of the United States, as a part of the transcript of record on the appeal herein, all original exhibits offered before the Three-Judge Court by either party, and shall also transmit true copy of the Champlin Company's motion to affirm.

Dated November [redacted], 1950.

/s/ EDGAR S. VAUGHT
District Judge

344 *Clerk's Certificate to Transcript*

United States of America,)
Western District of Oklahoma.) ss.:

I, THEODORE M. FILSON, Clerk of the United States District Court for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in Case No. 4562-Civil, Champlin Refining Company, Plaintiff, vs. United States of America, Defendant and Interstate Commerce Commission, Intervenor, as full, true and complete as the said transport purports to contain and as called for by the Praecipe for transcript of record on appeal above set forth, except that item designated as 9, "Objections on behalf of defendants United States and Interstate Commerce Commission to proposed findings of fact and conclusions of law presented on behalf of plaintiff," is not incorporated in this record for the reason that no document corresponding to this designation is a part of the Court record of this Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Oklahoma City, in said District, this 1st day of December, 1950.

(SEAL)

THEODORE M. FILSON
Clerk

347 At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 2nd day of February, A. D. 1948.

No. 29912

CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS

Order Instituting Proceeding

IT APPEARING, That the Champlin Refining Company of Enid, Okla., has for the last several years continuously owned and operated a pipe line transporting petroleum products between the State of Oklahoma and other States:

AND IT FURTHER APPEARING, That said Champlin Refining Company has failed to comply with the requirements of Section 20 of the Interstate Commerce Act (49 U. S. C. 20) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto with respect to accounting and the making and filing of annual and other reports:

IT IS ORDERED, That a proceeding of investigation and inquiry be; and it is hereby, instituted by the Commission, Division 1, upon its own motion, into the acts, practices, and conduct of said Champlin Refining Company with respect to such accounting and reports, with a view to making such orders as may be proper in the premises;

IT IS FURTHER ORDERED, That the Champlin Refining Company of Enid, Okla., be, and it is hereby, made respondent to this proceeding, and that a copy of this order be served upon said respondent;

AND IT IS FURTHER ORDERED, That this proceeding be, and same is hereby, assigned for hearing March 17, 1948, 9:30 o'clock A. M., United States Standard Time, at the office of the Interstate Commerce Commission, Washington, D. C., before Examiner J. P. Kelley.

By the Commission, Division 1.

W. P. BARTEL
Secretary.

(SEAL)

348 The Interstate Commerce Commission
Division No. 1

No. 29,912

In the Matter of
CHAMPLIN REFINING COMPANY,
Respondent.

Motion to Broaden Investigation—Filed March 8, 1948.

CHAMPLIN REFINING COMPANY, responding to the order of February 2, 1948 of Division No. 1 of the Interstate Commerce Commission in the above entitled proceeding, respectfully moves that the investigation herein be broadened so as to cover and include the question of the liability or non-liability of the said Respondent to file and publish schedules of rates, fares and charges to be used in the operation of its petroleum products pipe line extending from Enid, Oklahoma to Rock Rapids, Iowa.

For grounds of this motion, Respondent says:

On September 15, 1947, the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission mailed to the Respondent a letter of that date, copy
349 of which is hereto attached as Exhibit "A" and by such reference made a part hereof. That by the terms thereof, the Respondent was required with reference to the operation of the petroleum products pipe line above described, to

(1) set up and keep accounts in conformity with the system of accounts prescribed by the Commission for common carriers,

and,

(2) file the annual and other reports prescribed by the Commission for common carriers.

Representatives of the Respondent thereafter conferred wtih the Bureau of Transport Economics and Statistics and protested the requirements above stated on the ground that the products pipe line of the Respondent is not now and never has been a common carrier in fact, but on the contrary is a private plant facility.

The Commission thereupon instituted an investigation and inquiry in this proceeding, as evidenced by its order of February 2, 1948 served upon this Respondent, a true copy of which order is hereto attached as Exhibit "B" and by such reference made a part hereof.

That the Bureau of Traffic of the Interstate Commerce Commission on January 27, 1948 mailed to the
350 Respondent a letter of that date, a true copy of which letter is hereto attached as Exhibit "C" and by such reference made a part hereof. That by the terms thereof the Respondent was required to publish and file rates, fares and charges to be used in the operation of the petroleum products pipe line above described. The Respondent has protested the above requirements on the grounds above stated, namely, that its products pipe line is not now and never has been a common carrier in fact and is not subject to the provisions of the Interstate Commerce Act, and further, that if the said Act be construed to require that rates, fares and charges be published and filed for the private pipe line of this Respondent, the Act as so construed is unconstitutional and void in such respects.

The Respondent will contest the requirement of the Bureau of Traffic as to the publishing and filing of rates, fares and charges in the operation of said products pipe line if and when required, upon the same grounds that it is contesting the requirement of the Bureau of Transport Economics and Statistics as to the installation of a system of accounts required of common carriers, and believes
351 that it would be fitting and proper that inasmuch as the issues as to both of said requirements are identical, the same should be determined in a single hearing. The issues to be decided in both contests being the same, namely, as to whether the products pipe line of the Respondent is a common carrier under the terms of the Interstate Commerce Act, and if so, whether the Act may be constitutionally so interpreted in that respect, a single hearing will obviously best serve the interests of all parties, while securing an early determination of the ultimate tariff question.

Respondent further shows that the Interstate Commerce Act imposes severe penalties upon carriers which fail to publish and file schedules of rates, fares and charges required to be filed and published by the provisions of said Act, and for the failure to install the accounting system required of carriers by the Commission, as well as for the failure to file annual and other reports as required of carriers by the Commission.

That inasmuch as two of the bureaus of the Commission have made separate demands upon this Respondent for compliances as aforesaid, the Respondent is entitled to an

expeditious and speedy determination of its status under the Act, not only with reference to the installation
352 of a system of accounting and the filing of annual and other reports, but also as to the legality or non-legality of the requirement for the publishing and filing of schedules of rates, fares and charges for use in the operation of said products pipe line.

WHEREFORE, Respondent moves the Commission that it broaden the investigation in this proceeding so as to cover and include the liability or non-liability of this Respondent to file schedules of rates, fares and charges for use in the operation of its products pipe line above described, in order that the status of the said pipe line under the Interstate Commeree Act may be determined fully and finally for all such purposes in the one hearing.

Respectfully submitted,

CHAMPLIN REFINING COMPANY,
By
HARRY O. GLASSER,
NATHAN SCARRITT,
E. S. CHAMPLIN,
Its Attorneys and Counselors.

353 *Exhibit "A" to Motion*

JTC:PC

INTERSTATE COMMERCE COMMISSION
Bureau of Transport Economics and Statistics
Washington 25

September 15, 1947

Mr. Nathan Scarritt
Vice Pres., Champlin Refining Company
Enid, Oklahoma

Dear Sir:

On June 12, 1944, the Interstate Commerce Commission issued a report and order in Valuation Docket No. 1267, in which it was found that the Champlin Refining Company is a common carrier subject to the provisions of the Interstate Commerce Act.

Under the terms of Section 20 of the said Act, "common carriers" are required to file statistical reports with the I. C. C., and to set up and keep their accounts in conformity with the system of accounts, and related regulations, prescribed by this Commission.

For the benefit of Champlin Refining Company in complying with the reporting and accounting requirements

established pursuant to Section 20, I am sending you under separate cover copies of the forms and orders which apply, together with related memorandum pertaining to preparation of the principal report.

The documents being mailed to you separately at this time are as follows:

(a) A specimen of "Annual Report Form P (Carriers by Pipe Line)," together with copy of an order requiring its filing, and a memorandum of special instructions pertaining to its preparation by corporations engaged in producing, refining, and marketing petroleum.

(b) A supply of forms for the "Quarterly Report of Pipe Line Companies Having Annual Operating Revenues of More than $500,000," together with copy of an order requiring the filing of such reports.

(c) A copy of the "Uniform System of Accounts for Pipe Lines," as prescribed by the Commission, together with copies of certain supplemental orders, amendatory thereof.

354 Mr. N. S. 9/15/47

(d) A copy of the Commission's "Regulations to Govern the Destruction of Records of Carriers by Pipe Line," together with copy of an order amendatory thereof.

Reports on Annual Report Form P should be filed in behalf of the Champlin Refining Company following the close of each calendar year, the first such report to be made for the year ending December 31, 1947. (Forms to be used in making the 1947 report will be mailed to your company's address early in 1948.)

If revenues from the operation of your Products Pipe Lines Department are in excess of $500,000 annually, the filing of Quarterly Reports of Pipe Line Companies should commence immediately (or in no event later than with a report for the Quarter ending December 31, 1947).

The accounts of your Pipe Line Department should be brought into harmony with the classifications prescribed in the Uniform System of Accounts for Pipe Lines, as promptly as possible, and without extraordinary delay.

Regulations Governing the Destruction of Records are self-explanatory, and require no discussion here.

Please arrange to comply with the Commission's orders with respect to all matters brought to your attention herein; and advise me (at your early convenience) as to the name, official title, and office location of the officer of your

company who will be responsible for the preparation of its reports and the keeping of its books of account.

Very truly yours,

W. H. S. STEVENS
Director
By J. T. C.

Enclosures under
separate cover.

355 *Exhibit "B" to Motion*

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 2nd day of February, A. D. 1948.

No. 29912

CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS

IT APPEARING, That the Champlin Refining Company of Enid, Okla., has for the last several years continuously owned and operated a pipe line transporting petroleum products between the State of Oklahoma and other States;

AND IT FURTHER APPEARING, That said Champlin Refining Company has failed to comply with the requirements of Section 20 of the Interstate Commerce Act (49 U. S. C. 20) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto with respect to accounting and the making and filing of annual and other reports;

IT IS ORDERED, That a proceeding of investigation and inquiry be, and it is hereby, instituted by the Commission, Division 1, upon its own motion, into the acts, practices, and conduct of said Champlin Refining Company with respect to such accounting and reports, with a view to making such orders as may be proper in the premises;

IT IS FURTHER ORDERED, That the Champlin Refining Company of Enid, Okla., be, and it is hereby, made respondent to this proceeding, and that a copy of this order be served upon said respondent;

AND IT IS FURTHER ORDERED, That this proceeding be, and same is hereby, assigned for hearing March 17, 1948, 9:30 o'clock a. m., United States Standard Time, at the office of the Interstate Commerce Commission, Washington, D. C., before Examiner J. P. Kelley.

By the Commission, Division 1.

W. P. BARTEL,
Secretary.

(SEAL)

356 *Exhibit "C" to Motion*

RDH:hb
File 24

INTERSTATE COMMERCE COMMISSION
Bureau of Traffic
Section of Tariffs
Washington

January 27, 1948.

Mr. Nathan Scarritt,
Champlin Refining Company,
Enid, Oklahoma.

Dear Sir:

Under date of October 20, 1941, your attention was directed to part I of the Interstate Commerce Act wherein the term "common carrier," as construed by this Commission and the Supreme Court, includes all pipe-line companies and you were asked if your failure to file tariffs was an oversight or to state upon what grounds you felt your company need not file tariffs. Your letter of November 3, 1941 stated your company had not filed a schedule of rates for its products pipe line because the line is exclusively a plant facility for the conveyance of the products of the company. You further stated that according to your understanding of the Transportation Act your company was not subject thereto.

Since that time both this Commission and the courts have found the Champlin Refining Company to be engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. See *Valuation of Pipe Line of Champlin Refining Company*, 49 Val. Rep. 463, 49 Val. Rep. 542; *Champlin Refining Co. v. United States*, 59 F. Supp. 978; *Champlin Rfg. Co. v. United States*, 329 U. S. 14.

Up to the present time no schedule of rates has been filed with this Commission to cover the interstate transportation of petroleum products from Enid, Okla., to the various outlets along the line. Section 6 of the Interstate Commerce Act requires every common carrier subject to the provision of part I of the Act to publish and file with the Commission a schedule of rates and charges between different points on its own route. It is not believed that your pipe line connects with any other pipe line for joint or through transportation of products, nor is it believed that you have any through arrangements with other type carriers.

You should arrange to promptly publish and file with this Commission a tariff naming rates between the
357 various points on your line. If joint rates or through arrangements with other carriers are involved, rates should also be filed to cover such transportation. The tariff filed should comply with the tariff publishing rules set forth in the Commission's Tariff Circular No. 20. If you do not have a copy of that tariff circular, a copy may be obtained from the United States Government Printing Office, Washington, D. C.

Will you please advise when we may expect the tariff to be filed?

Yours truly,

E. W. CHAPDELAINE
Chief, Section of Tariffs.

358 At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 3rd day of March, A. D. 1948.

No. 29912 (Sub-No. 1)

CHAMPLIN REFINING COMPANY TARIFFS

Order Instituting Proceeding

IT APPEARING, That the Champlin Refining Company of Enid, Okla., has for the last several years continuously owned and operated a pipe line transporting petroleum products between the State of Oklahoma and other States;

AND IT FURTHER APPEARING, That said Champlin Refining Company has failed to comply with the requirements of Section 6 of the Interstate Commerce Act (49 U. S. C. 6) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto with respect to the publishing, posting, and filing of tariffs;

IT IS ORDERED, That a proceeding of investigation and inquiry be, and it is hereby, instituted by the Commission, Division 2, upon its own motion, into the acts, practices and conduct of said Champlin Refining Company with respect to such non-compliance with Section 6 of the Interstate Commerce Act, with a view to making such orders or taking such other action as may be proper in the premises;

IT IS FURTHER ORDERED, That the Champlin Refining Company of Enid, Okla., be, and it is hereby, made respondent to this proceeding, and that a copy of this order be served upon said respondent;

AND IT IS FURTHER ORDERED, That this proceeding be, and same is hereby, assigned for hearing March 17, 1948, 9:30 o'clock a. m., United States Standard Time, at the office of the Interstate Commerce Commission, Washington, D. C., before Examiner J. P. Kelley.

By the Commission, Division 2.

W. P. BARTEL
Secretary.

(SEAL)

359 THE INTERSTATE COMMERCE COMMISSION

In the Matter
of
CHAMPLIN REFINING COMPANY, RESPONDENT.

Division No. 1
No. 29,912

Division No. 2
No. 29,912
Sub. No. 1

Response—Filed June 17, 1948

COMES NOW, The Champlin Refining Company, a New Mexico corporation, and for response to the order of February 2, 1948 in No. 29,912 by Division No. 1, and the order of March 3, 1948 of Division No. 2 in No. 29,912, Sub. No. 1, of the Interstate Commerce Commission, directing respective proceedings of investigation and inquiry into the acts, practices and conduct of the Champlin Refining Company with respect to its failure in the operation of its private interstate products pipe line between its refinery at Enid, Oklahoma and its storage facilities at Hutchinson, Kansas, Superior, Nebraska and Rock Rapids, Iowa, to comply with, (a) common carrier accounting procedure and to file annual and other reports, and (b) for its failure to post, publish and file tariffs, all as required of common carriers by the Interstate Commerce Commission, and says:

I

That it is not a pipe line company as that term is defined in the Interstate Commerce Act, and is not engaged
360 in the operation of its pipe line in interstate commerce within the intent of said act, nor is it engaged in "transportation" within the meaning of such act and is not a "common carrier" as defined in the Interstate Commerce Act, Title 49 USC, Sec. 1, and is not required to publish, post and/or file tariffs to comply with Title 49 USC,

Sec. 6 (1) and (7), nor is the Commission authorized to require respondent to file annual reports, nor to require it to install "a uniform system of accounts" required of common carriers to comply with Title 49 USC, Sec. 20, and by reason thereof should be relieved of compliance with the orders of February 2, 1948 and of March 3, 1948, as aforesaid, herein complained of.

II

Respondent is, and was at all times herein mentioned, engaged in the business of producing and refining crude petroleum and marketing the refined products thereof and has owned and operated and now owns and operates a refinery at Enid, Oklahoma, by the manufacturing use of which it refines crude petroleum for the purpose of recovering and marketing refined petroleum products, including gasoline, kerosene and tractor fuel, which refined products are sold and distributed by respondent in Oklahoma, Kansas, Nebraska, Iowa and other states. Respondent has constructed a private pipe line from the respondent's refinery at Enid, Oklahoma to its storage facili-
361 ties at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The said products pipe line was built as a plant facility to be used exclusively for the distribution of refined petroleum products owned and manufactured by respondent at its Enid refinery, never having been used to move any petroleum products owned by (or purchased from) any other person, firm or corporation. The respondent, in the construction and operation of said pipe line, has never exercised the right of eminent domain, nor any other privilege of a common carrier. Respondent's sales of said products in the several states tributary to said pipe line represents the complete antithesis of a monopoly, amounting to less than three (3) per cent of the total volume of such products sold in said states.

III

Respondent as one of the pioneers in the use of a welded, seamless, steel pipe line for distribution of gasoline, kerosene and tractor fuel, commenced the construction of the line in 1935. The first opening on the line was made at Hutchinson, Kansas, which is 113 miles from the Enid refinery. The line was not again opened in the State of Kansas at any point, being carried to Superior, Nebraska, where the second opening was placed in the line. The line was then carried through Nebraska, South Dakota and into

Iowa, without any opening except at the terminal of the line at Rock Rapids, Iowa. At no place except Enid,
362 Oklahoma, Hutchinson, Kansas, Superior, Nebraska and Rock Rapids, Iowa, can any petroleum products be placed in or taken from the pipe line. Furthermore, no other company or operator of a products pipe line, or of any other kind of pipe line, has been permitted to make any connection with the line in question, nor has any individual engaged in the gasoline, kerosene or fuel oil businesses been permitted to make any connections therewith.

The respondent further states that it never has offered to carry through such products pipe line, petroleum products of any kind for any person or company whomsoever.

All of the products placed in said pipe line are owned by the Champlin Refining Company, not only when the product leaves the refinery, but as well when it comes to rest in the storage tanks at some one of the three terminals of the pipe line hereinbefore identified, and thereafter until sold from said terminal storage tanks. In consequence of such operation, no sale has ever been made at the Enid refinery to be delivered through such pipe line. In every instance, the sales of products which have been transported through the pipe line, have been made out of the storage tanks at some one of such terminals.

Said products pipe line has at all times been,

(a) owned, used and operated solely by respondent as a plant facility for moving the products of re-
363 spondent's refinery to respondent's own storage facilities, which use is incidental to and a part of respondent's private business as a producer and refiner of crude petroleum and a marketer of the products thereof;

(b) so mechanically constructed and operated that it has not had any facilities or means for receiving, transporting, carrying, storing or delivering any petroleum products or other commodities for any person other than respondent; and,

(c) used and operated as a private carrier for respondent's property and as a plant facility to respondent's refinery.

IV

The products pipe line so constructed had been in partial operation to Hutchinson, Kansas, since July 1935, to Superior, Nebraska since September 1935, and in full operation since the completion of the line into Rock Rapids, Iowa on or about May 1940. Its status as a private carrier

was first questioned by the Bureau of Valuation of the Interstate Commerce Commission, which Bureau on May 15, 1941 directed this respondent to file a valuation report covering the said pipe line.

Respondent thereupon filed with the Commission, a petition asking that it be relieved of the requirement of
364 filing a valuation report, which petition was docketed under valuation docket No. 1267. After due hearing, Division 2 of the Commission ordered this respondent to file a valuation report, which order was confirmed by the full Commission.

Thereafter, this respondent brought an action in the United States District Court for the Western District of Oklahoma in case No. 1559 Civil in said Court, asking that the said order be enjoined. The District Court, three judges sitting, ordered respondent's petition dismissed, one judge dissenting. Thereafter, the Supreme Court of the United States, four judges dissenting, upheld the Commission valuation order by decision reported in the case of Champlin Refining Company v. United States and Interstate Commerce Commission, reported in 329 U. S. 29, 91 L. Ed. 1. This respondent thereupon filed the "valuation report" in satisfactory form as ordered by the Commission, and is in full compliance with the said order.

The Supreme Court of the United States in its opinion upon that issue, made it plain that its decision was limited to the "valuation order" and was not to be construed as holding that your respondent might lawfully be required to convert its products pipe line into a common carrier. That question was reserved for future decision. The Court said:

365 "We hold that Champlin's operation is transportation within the meaning of the Act and that the statute supports the Commission's order to furnish information.

"Appellant further contends that, as so construed, the Act exceeds the commerce power of Congress and violates the due process clause of the Fifth Amendment because it is argued that this interpretation converts a private pipe line into a public utility and requires a private carrier to become a common carrier. But our conclusion rests on no such basis and affords no such implication. The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status, but is quite as extensive over a private carrier. This power has yet been invoked only

to the extent of requiring Champlin to furnish certain information as to facilities being used in interstate marketing of its products. The Commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier.

"The contention that the statute as so construed violates the due process clause by imposing upon a private carrier the obligations of a conventional common carrier for hire, is too premature and hypothetical to warrant consideration on this record. The appellant in its entire period of operation has never been asked to carry the products of another and may never be. So far, the Commission has made no order which changes the appellant's obligations to any other company or person. If it does, it will be timely to consider concrete requirements and their specific effects on appellant. At the present, appellant is asked only to provide information about a subject within the power possessed by Congress and delegates to the Commission, and that cannot be considered a taking of property even if it arouses appellant's premonitions."

It is obvious from the above quotation that even the five justices of the Supreme Court concurring in the majority opinion, believed it highly debatable as to whether this Commission could, constitutionally, require the petitioner to "carry the products of another", or to make any order which would convert the pipe line of the respondent into a "common carrier" in fact.

366

Respondent now avers that the requirement of the Bureau of Transport Economics and Statistics that respondent adopt common carrier accounting procedure and file annual and other common carrier reports and of the Bureau of Traffic that respondent post, publish and file tariffs will, without compensation therefor, convert the "respondent's private pipe line into a public utility" and will require the respondent as a "private carrier to become a common carrier", all in violation of the law.

That such requirements, if carried out, will change the respondent's obligation to other companies and persons and will compel the respondent to accept the obligations of a common carrier and to carry petroleum products for its competitors and others, to the destruction of its business as a producer and refiner of crude oil and marketer of the products thereof, and to so construe the Act exceeds the commerce power of Congress and violates the due process clause of the Fifth Amendment to the Constitution.

WHEREFORE, the respondent prays that it may be discharged of the proposed requirements and that it be adjudged that the respondent is not as a matter of statutory and constitutional right required to install common
367 carrier accounting procedure, nor to be compelled to file common carrier annual and other reports, nor to publish, post and/or file tariffs, nor to be required to accept tenders of petroleum products of any kind from any shipper or competitor for transportation in said products pipe line, and for such other relief as shall be proper and just.

CHAMPLIN REFINING COMPANY,
Respondent,
HARRY O. GLASSER
NATHAN SCARRITT
E. S. CHAMPLIN,
Counsel for Respondent.

368 Before The Interstate Commerce Commission

Docket No. 29912
and
Docket No. 29912 Sub. 1.

In the Matter
of
CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS;
and
CHAMPLIN REFINING COMPANY TARIFFS.

Reporter's transcript of hearing

Hearing Room D,
Interstate Commerce Commission
Building,

Tuesday, July 20, 1948.

Met, pursuant to notice, at 9:30 o'clock a. m.
Before: J. PAUL KELLEY, *Examiner.*

APPEARANCES:

Harry O. Glasser, and, Nathan Scarritt, of Enid, Oklahoma, appearing for the Champlin Refining Company of Enid, Oklahoma, respondent.

H. L. Underwood, of Washington, D. C., appearing for the Interstate Commerce Commission of Washington, D. C.

Exam. KELLEY: We will come to order. The Interstate Commerce Commission has assigned for hearing at this time and place, Docket Number 29912 and Docket 29912 (Sub No. 1), the first being Champlin Refining Company accounts and reports, and the Sub Number being Champlin Refining Company Tariffs.

The orders assigning these cases for hearing announced that the Champlin Refining Company has failed to comply with the requirements of Sections 6 and 20 of the Act to regulate commerce under the Interstate Commerce Act, and this proceeding is one of investigation and inquiry on the Commission's own motion into the said acts and practices of the Champlin Refining Company with a view to making such orders or taking such other action as may be proper.

Who appears for the respondent in this proceeding?

Mr. GLASSER: Harry O. Glasser, and Nathan Scarritt.

Exam. KELLEY: For the Interstate Commerce Commission?

Mr. UNDERWOOD: H. L. Underwood.

Exam. KELLEY: Are there any other appearances?

(No response.)

Exam. KELLEY: You can make a statement, now if you care to, Mr. Glasser.

Mr. GLASSER: We are ready to proceed except for the fact
371 that Mr. Champlin is flying from Minnesota. He is supposed to be here this morning at about 9:30. That is standard time. That will be 10:30 o'clock Daylight Saving Time. We would like to ask to have the matter adjourned until following the noon recess. He will be here and we will be ready to proceed promptly at 1:30 o'clock p. m., or whatever time convenient.

Exam. KELLEY: There is no objection, I assume. Do you have anything, Mr. Underwood?

Offers in evidence.

Mr. UNDERWOOD: I have some papers that I would like to introduce into evidence. I have called them to the attention of Mr. Champlin, and he has agreed to their receipt. He has no objection. They are as follows: These that I will first identify relate to Docket No. 29912, the Champlin Refining Company. The first one is photostat copy of a letter of September 15, 1947, addressed to Mr. Nathan Scarritt, Vice President of the Champlin Refining Company from the Bureau of Transport, Economics and

Statistics. The Commission, relative to the reports by Champlin, required by Section 20 of the Interstate Commerce Act, and advising of transmitting of forms for the purpose of that requirement.

Exam. KELLEY: You are offering that as an exhibit?

Mr. UNDERWOOD: Yes.

Exam. KELLEY: That will be Exhibit No. 1.

(Commission's Exhibit No. 1 was marked for Identification.)

Mr. UNDERWOOD: The first one is dated September
372 15, 1947. It is a photostat copy.

Exam. KELLEY: Will you identify them as you go along? We will go off the record.

(Discussion off the record.)

Exam. KELLEY: On the record.

Mr. UNDERWOOD: Exhibit No. 2 for identification is a photostat copy of a letter of October 7, 1947 signed by Nathan Scarritt, Vice President of Champlin Refining Company, in reply to the letter of the Bureau of Transport, Economics and Statistics.

Exam. KELLEY: It will be marked for identification as Exhibit No. 2.

(Commission's Exhibit No. 2, marked for identification.)

Mr. UNDERWOOD: Exhibit No. 3 is a photostat copy of a letter of October 31, 1947, addressed to the Interstate Commerce Commission, written by Champlin Refining Company making further statement in reply to said Bureau's letter of September 15, 1947.

Exam. KELLEY: It will be marked for identification as Commission's Exhibit No. 3.

(Commission's Exhibit No. 3, marked for identification.)

Mr. UNDERWOOD: Exhibit No. 4, is a photostat copy of a memorandum dated September 24, 1947, signed by W. H.
Stevens, Director of the Bureau of Transport Eco-
373 nomics and Statistics, addressed to Section of Dockets, Directing Service on the Champlin Refining Company reflecting copies and orders of the Commission of current effect with respect to pipeline companies, together with copies of said regulations and orders.

Exam. KELLEY: You mean all of these parts attached are part of Exhibit No. 4?

Mr. UNDERWOOD: Yes.

Exam. KELLEY: It will be marked for identification as Commission's Exhibit No. 4.

(Commission's Exhibit No. 4, marked for identification.)

Mr. UNDERWOOD: This is the annual form report of the pipelines.

Exam. KELLEY: It is not necessary to put that in as an exhibit. You can refer to it any time you care to on the record.

Mr. UNDERWOOD: But, I mean in case this case should go into court, it might be that the court would like to see just exactly what the requirements were.

Exam. KELLEY: Very well, put it in as a separate exhibit, Exhibit No. 5, with the order that goes with it. I will identify that as Commission's Exhibit No. 5.

(Commission's Exhibit No. 5, marked for identification.)

374 Mr. UNDERWOOD: Commission's Exhibit No. 5 is a copy of orders of the Commission, Division 4, October 20, 1938, entitled, "In the matter of statistical reports of pipeline companies." With that is a copy of form QPS, quarterly report of pipeline companies. Also a copy of the annual report form P. (carriers by pipeline) for submitting annual report.

In 29912 Sub No. 1, I would like to introduce a copy of a letter of January 27, 1948, addressed to Mr. Nathan Scarritt, Champlin Refining Company signed by E. W. Chapdelaine, Chief, Section of Tariffs of the Commission, in which the Champlin Refining Company is notified, that it should arrange the proper publishing file with the Commissioner of Tariffs, naming rates between the various points on this line. Do you want a separate number on those?

Exam. KELLEY: That will be Commission's Exhibit No. 6.

(Commission's Exhibit No. 6, marked for identification.)

Mr. UNDERWOOD: The next is a copy of a letter dated February 6, 1948, addressed to Mr. Chapdelaine by Mr. Scarritt, replying to the letter of January 27, 1948.

Exam. KELLEY: That will be identified as Commission's Exhibit No. 7.

(Commission's Exhibit No. 7, marked for identification.)

Mr. UNDERWOOD: May the record show that there
375 has been no compliance with either of these requirements of the Commission by the Champlin Refining Company.

Mr. GLASSER: Let the record show that there has been no compliance by the Champlin Company with either of the orders referred to.

Mr. UNDERWOOD: Mr. Examiner, I should also like to introduce in evidence by reference the following items:—

Exam. KELLEY: Are they included in a affidavit, joined by counsel?

Mr. UNDERWOOD: No.

Mr. GLASSER: I will agree to stipulate that he may adjust them.

Exam. KELLEY: So long as that is made clear on the record. The rules of practice require a stipulation.

Mr. UNDERWOOD: I didn't know whether I could make it now on the record.

Exam. KELLEY: That is all right. That will be just as good in this case. We will go off the record.

(Discussion off the record.)

Exam. KELLEY: On the record. Is that all you have, now?

Mr. UNDERWOOD: That is all I have.

Mr. GLASSER: I understand you are offering all the items?

Mr. UNDERWOOD: To be incorporated by reference
376 in valuation docket No. 1267.

Mr. GLASSER: If you will prepare a stipulation during the adjournment, I will sign it.

Exam. KELLEY: There being no objection to the receipt of these exhibits, Commission's Exhibits 1 to 7, inclusive, they are received in evidence.

(Commission's Exhibits No. 1 through 7, inclusive received in evidence.)

Exam. KELLEY: As there is nothing further before us, at this time, we will recess until 2:00 o'clock p. m.

(Whereupon, at 10:00 o'clock a. m., a recess of the above-entitled matter was taken until 2:00 o'clock of the same day.)

377 AFTERNOON SESSION 2:00 P. M.

Colloquy

Exam. KELLEY: We will come to order. Proceed, Mr. Underwood.

Mr. UNDERWOOD: Mr. Examiner, this is a stipulation which has been signed by counsel for the Champlin Refining Company and myself. It stipulates for incorporation by reference into the record in these two cases, certain parts of the record in valuation Docket No. 1267, Valuation of Pipe Line of Champlin Refining Company and enumerates parts of the record.

Exam. KELLEY: It is self-explanatory?

Mr. UNDERWOOD: Yes.

Exam. KELLEY: Hand that to the reporter and we will make it a part of the record.

Mr. UNDERWOOD: This incorporated part is now received in the record by reference?

Exam. KELLEY: Yes. It will be considered from here on, as part of this record.

Mr. GLASSER: I have a suggestion in connection with that. I notice that you adjust the page numbers for identification of what I assume is the original transcript.

Mr. UNDERWOOD: The transcript of the hearing.

Mr. GLASSER: If we could, before we adjourn, identify those pages in the printed record of the Supreme Court of the United States, subsequently, we could adjust it in court.

378 Exam. KELLEY: That can't be done here because you are incorporating a part of another record here before the Commission. You can agree between yourselves how you will refer to it in your briefs or argument, but for the purpose of the record, we have to have the page numbers as they appear in the original record.

Mr. GLASSER: I just meant to put in parenthesis the additional page numbers for convenience, because I assume now that you intend to quote the entire testimony of Mr. Leverton's testimony.

Mr. UNDERWOOD: That is correct.

Mr. GLASSER: And that is true in each instance, isn't it?

Mr. UNDERWOOD: Except for Mr. Collier. No, he is going to stop on line 4.

Mr. GLASSER: If I could agree with you before I leave, for our convenience, and reference, and for your convenience and reference later, as to the pages before the Supreme Court, it would be helpful.

Mr. UNDERWOOD: Yes. I will go over my records upstairs and we will incorporate that on our own copies.

Mr. GLASSER: Fine. That will be very helpful to me. If it pleases the Examiner, I regret to say that I had hoped this morning to be ready to proceed at 2:00 o'clock, with our testimony, but Mr. Champlin's train did not get

379 in 10:30 o'clock a. m., and by the time he got to the hotel it was already 11:00 o'clock. We worked between 11:00 o'clock and 12:00 o'clock, and I call your Honor about 12:30 or 1:00 o'clock. It was just impossible for us to get ready by 2:00 o'clock, but I can make the definite announcement that we can be ready at 9:30 in the morning, if we can have a further adjournment until that time, and I will furnish Mr. Underwood with a copy of all our matters, as soon as I can do so, including all of the Exhibits.

We have 21 exhibits and some of them are very complicated and they are in colors and we found that one of our exhibits, Exhibit No. 9—we have been arguing about

whether we would or should not introduce it and so I had my way and now that changes the numbers on all of the other 21 exhibits. That is one of the mechanics. We had those numbers lettered on there and I have to change all of that this afternoon and then we want to discuss some of the answers. I will just leave it until 9:30 o'clock tomorrow morning and put it in proper form and then I can finish in two hours time, tomorrow morning. I will give you one of those copies this afternoon, and I will get as much to you as we finish by five o'clock. At that time, I will give you such copies as we have ready, and the exhibits to correspond.

As far as we go on the exhibits, I would just as soon furnish all the exhibits that will be introduced up to
380 that point. I can do that very easily, as the exhibits are all self-explanatory, and I will give you a set of exhibits this afternoon, definitely, by five o'clock. You can adjust them tonight in preparation of cross examination. I will give you as much testimony as we have typed by five o'clock.

Exam. KELLEY: Under the circumstances, we will take a recess now, until 9:30 o'clock tomorrow morning.

(Whereupon, at 2:15 o'clock p. m., the hearing was recessed until 9:30 o'clock a. m., Wednesday, July 21, 1948.)

381 Before the Interstate Commerce Commission

Docket No. 29912 and
Docket No. 29912 Sub. 1.

In the Matter
of
CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS;
and
CHAMPLIN REFINING COMPANY TARIFFS.

Hearing Room D,
Interstate Commerce Commission
Building,
Washington, D. C.

Wednesday, July 21, 1948.

Met, pursuant to adjournment at 9:30 o'clock a. m.
Before: J. PAUL KELLEY, *Examiner.*

APPEARANCES:

As heretofore noted.

Exam. KELLEY: Come to order, gentlemen.

If you are ready, you may proceed, Mr. Glasser, with the presentation of your evidence.

Mr. GLASSER: I first desire, sir, to offer in evidence some documentary items. I wish to have marked for identification a letter, Mr. Underwood, which will be found at page 25, Volume I of the transcript in the former case, a letter dated, April 27, 1936. Record reference page 25, Volume I of number 75 of the Spring Term of 1945.

I would like to read it into the record. It is very short.

Mr. UNDERWOOD: This is the printed copy?

Mr. GLASSER: Yes.

Mr. UNDERWOOD: Do you have the reference to this?

Mr. GLASSER: No, I do not.

If your Honor please, this is a letter signed by Mr. M. O. Lorenze, who was then Director of Statistics, initialed E. F. W., addressed to the Interstate Commerce Commission, Bureau of Statistics, Washington, D. C. E. F. B. R. S. R. S. 5595,

April 27, 1936.

"Mr. Nathan Scarritt,
Champlin Refining Company,
Enid, Oklahoma.
Dear Sir:

This will acknowledge receipt of your letter of April 1, 1936, received, concerning the operations of the

385 Champlin Refining Company.

It is understood from the information furnished that respondent uses this pipe line as a plant facility only, that (Folio) it has never transported of offered to transport the products of any other person, firm or corporation through this line, and so forth, as a common carrier or by contract and that it files no tariffs with this Commission.

In view of these conditions, would advise that an annual report need not be filed with this Commission for the year 1935, and the report forms "P", which I sent to you should be returned to this Bureau. For your convenience in returning these forms, I am enclosing an addressed label, which may be used and requires no postage.

Very truly yours,
M. O. LORENZE,
Director of Statistics
By E. F. B.
Enclosure"

Mr. UNDERWOOD: I have no objection to the letter going in, but I do raise the question as to its competency, so far as binding the Commission. It is written by the then Director or Assistant Director.

Exam. KELLEY: That question hasn't been raised. You may send that in as an late filed exhibit and an appropriate number will be assigned to it.

(Whereupon, the Document referred to will be filed as a late exhibit.)

386 Mr. GLASSER: I ask to have marked for identification, a part of page 88 of the 64th annual report of the Interstate Commerce Commission, dated November 1, 1947, with reference to the Champlin Refining Company, 329 U. S. 29. I desire to offer in evidence the part of the report which merely relates to the Champlin Refining Company—

Exam. KELLEY: The Commission can take judicial notice of its own report.

Mr. GLASSER: Will the record show that we tendered it?

Exam KELLEY: The record already shows that.

Mr. GLASSER: I ask to have marked for identification, U. S. Department of Commerce, Bureau of Mines, Technical paper, 517, "Transportation of gasoline by pipeline", published in the U. S. Government Printing Office and I have the additional copies on the way now and I will furnish you with the three additional copies.

Mr. UNDERWOOD: This is the entire pamphlet?

Mr. GLASSER: Yes.

Mr. UNDERWOOD: May I ask counsel to state the purpose of this offer? To what issue is it directed?

Mr. GLASSER: It is first, a historical document and, second: it recites the history of the first private pipe line in use in the United States and shows the location of the line. The paper was published in 1932. The important part commences with the history in of the line known as the Tuscarora Pipe line.

387 It develops the history and and shows the only pipelines in existence for hauling gasoline at about the time this lawsuit arose.

On page 4 is the history of the small lines in the State of California, and then there is a chart that shows the status of the pipe line development at that time. It is quite an important story, historically, and is accurately stated as to the pipelines.

Exam. KELLEY: It may be marked respondent's Exhibit No. A.

(Respondent's Exhibit No. A, marked for identification.)

Mr. GLASSER: I desire to offer in evidence, pages 568 to 628 of the text, inclusive, as a separate exhibit, of Volume II of the transcript of the record of the Supreme Court of the United States, October Term 1945, No. 75, Champlin Refining Company versus United States, being the transcript of the record in the Uncle Sam Case.

Exam. KELLEY: You may send that in as a late-filed exhibit, and an appropriate number will be assigned to it.

(Whereupon, the document referred to will be filed as a late-filed exhibit.)

Mr. GLASSER: Very well. I would like to have marked for identification, the brief of the Interstate Commerce Commission in the original pipelines cases, the text of which will be found at pages 693 to page 880, inclusive of Volume II of the Transcript of record in the case
388 referred to by the Supreme Court of the United States.

Exam. KELLEY: You may send that in as a late-filed exhibit and an appropriate number will be assigned to it.

(Whereupon, the document referred to will be filed as a late-filed exhibit.)

Mr. GLASSER: May I have marked for identification, the brief of the Uncle Sam Company, found at pages 693 to 880 inclusive in the same record?

I might say to the court, we will furnish three separate copies, so that the volume itself, won't have to be handled and used in making the transcript.

Exam. KELLEY: You may send that in as a late-filed exhibit and an appropriate number will be assigned to it.

(Whereupon, the document referred to will be filed as a late-filed exhibit.)

Mr. GLASSER: Those will be all the exhibits that we have to offer outside of Mr. Leverton's testimony, which will relate to the exhibits that are on the table.

Exam. KELLEY: Those exhibits will be numbered respondent's Exhibit No. 1, consecutively through as far as they go.

Mr. GLASSER: I will call Mr. Leverton.

G. E. LEVERTON, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. GLASSER). Please state your name.

389 A. G. E. Leverton.

Q. Where do you reside?

A. 1510 East Broadway, Enid, Oklahoma.

Q. What is your occupation?

A. I am Comptroller of Champlin Refining Company of Enid, Oklahoma.

Q. How long have you been employed by Champlin Refining Company?

A. I was first employed by the Champlin Refining Company in 1923 as General Auditor. I was made Comptroller in 1943.

Q. What are your duties in such position?

A. I have charge of the General Accounting System of the Company. I receive and analyze regular investment, operating and financial reports from all departments of the company and keep the management informed of the results of operations and the financial position of the company. My duties include supervisory responsibilities in connection with all of the company operations.

Q. Are you also familiar with general conditions in the oil industry; particularly with reference to production, refining and marketing conditions in the Mid-Continent area and Texas?

A. Yes, my duties have made it necessary for me to be informed of such conditions over the past 25 years.

390 Q. Does the Champlin Refining Company own a products pipe line?

A. Yes.

Q. Between what points was such pipe line constructed?

A. From Enid, Oklahoma extending north through Hutchinson, Kansas and Superior, Nebraska to Rock Rapids, Iowa. The Rock Island Railroad siding which serves the Rock Rapids terminal is about two miles outside the city limits and was designated by the railroad as "Champlin, Iowa." The Rock Rapids terminal is therefore sometimes known as Rock Rapids and sometimes as Champlin, Iowa.

Q. What is a product line?

A. A line used to move refined petroleum products.

Q. Are you familiar with the facts concerning the construction and operation of the company's products pipe line and with the corporate history and structure of the Champlin Refining Company?

A. I am.

Q. I hand you herewith a document which has been marked Respondent's Exhibit "I" and ask you what it is?

Mr. GLASSER: If your Honor pleases, that is the exhibit on top.

Exam. KELLEY: They are all marked. You do not need to refer to them.

Mr. GLASSER: I will not separately refer to them.

391 The WITNESS: This is a transcript of those portions which we considered applicable to the present hearing, of the findings of fact of the Interstate Commerce Commission as contained in the Report of the Commission on Reargument in its Valuation Report, Docket No. 1267 entitled, "Valuation of Pipe Line of Champlin Refining Company."

Q. (By Mr. GLASSER) Are the facts as found by the Commission and recited in said Exhibit "I" true and correct at the present time?

A. Yes. The facts as contained in Exhibit "I" are still true today, with the exception that our total investment in our products pipe line and appurtenant facilities, has been slightly increased and is now $3,230,050.26.

Mr. GLASSER: We now offer Exhibit "I" in evidence as a part of the testimony of this witness on direct examination.

Exam. KELLEY: Let the record show it has been marked for identification as Respondent's Exhibit No. 1.

(Respondent's Exhibit No. 1 marked for identification.)

Q. (By Mr. GLASSER) Will you please give the present status of the capitalization of the Champlin Refining Company?

A. The corporation is authorized to issue 250,000 shares of common stock without par or nominal value, and 2,000 shares of six per cent preferred stock of par value of $100.00 per share. 82,472 shares of the common stock are now issued and outstanding. All of the stock is owned by Joe N. Champlin and other members of the

392 Champlin family. The preferred stock is outstanding.

Q. Will you please relate to the Commission the structure, origin and growth of the Champlin Refining Company as the same relates to the construction and operation of the Company's products pipe line?

A. First, I would like to state that the Champlin Refining Company is essentially a refining company. We have a refinery of 18,000 barrels per day capacity, but we have never had the resources or good fortune to discover sufficient production of our own to supply the refinery. We have never produced more than approximately 45 percent

of the crude oil required by our refinery and hence have always been compelled to purchase on the open market, more than half of our crude oil requirements. The production which we have, the crude lines which convey the crude oil to our refinery, the products pipe line which conveys refined products to our storage tanks at our terminals, the tank cars and the stations and bulk plants which we lease to independent trade, are all incidental to our refining operations and all exist for the purpose of keeping the refinery in operation.

The Champlin Refining Company was originally organized by the late H. H. Champlin in 1917. It was, like almost every other independent refining company, born on the edge of a newly discovered oil field. The discovery of al-
most every oil field of substantial size has been at-
393 tended with the origin of a number of small re-
fining companies, because their immediate proximity to such field enables them to compete with the larger companies as long as the field is in flush production. After that, additional investments are needed which most of the small companies are unable to make, and as a result many such companies go out of existence as their local field becomes depleted.

Mr. Champlin was in business in 1916, operating a general hardware store and a bank in Enid, Oklahoma. He had formerly been in the lumber business. The Garber Oil Field was discovered about 20 miles east of Enid at that time, and Mr. Champlin, together with his wife, purchased an undeveloped lease in that area, drilled the same for oil, and obtained substanfial production. With the proceeds from the sale of production on this lease, he purchased a small uncompleted oil refinery which had been built at Enid by a stock company. The Champlin plant was entirely dependent upon crude from the Garber field and in order to obtain such crude it paid substantial premiums for all of the crude oil which it purchased for the first few years of its existence.

In 1921, the Tonkawa Oil Field, about 25 miles northeast of the Garber Field, was discovered. The wells in that field were more prolific and in greater number than those that had been producing in Garber, as a result of which the company was encouraged to believe that an expansion program was justified and that an adequate supply
would be available over an extended period of time.
394 The refining capacity of Champlin Refining Company was accordingly increased to meet the de-

mands of the market that had been found for its refined products.

Since that time, the Champlin Company has been engaged in a never-ending search for crude oil to meet the refinery needs.

At the present time, we are producing approximately 6,000 barrels of crude oil per day, but have a demand for all of the products that can be manufactured in an 18,000 barrel refinery. Under present conditions we are finding it impossible to purchase an additional 12,000 barrels per day which is required to meet such demand and our crude supply is running substantially behind our crude requirements.

Turning to the manufacturing development of the refinery, the company commenced business with a skimming plant. Then in about 1926, a revolutionary development in the refining process came about as a result of mechanical changes in the automobile motor. This need was met by the development of the cracking process. Our company was therefore compelled to install a cracking process to keep in step with the development of the art.

The constant expense of purchasing and installing new refinery equipment as the art developed, and of the search for new sources of supply in the face of obstacles such as I have just described, has always made it necessary
395 that our profits be put back into the business.

Turning to the company's marketing problem, I may state generally that the company's products are marketed in Oklahoma and in the territory north of Oklahoma, between the Rocky Mountains and the Mississippi River, which has always been our natural marketing territory. Practically all of the company's products are sold to independent jobbers, most of whom own their own facilities or lease them from others. The company owns a substantial number of bulk plants and filling stations in these states. All of these except six bulk plants are leased to independent merchants and are operated by them entirely independently of our company. These independent merchants buy any quantity of products which they require and fix their own prices at which they wish to resell such products, employ their own help, and are entirely free from supervision of any nature or kind on the part of our company.

The company was able to maintain our sales at a volume sufficient to care for the capacity of our refinery, until 1926 when our sales began to decline. From this time until 1934,

our volume of sales declined at an alarming rate, until it was evident that some means would have to be adopted to preserve the life of our company. This loss of sales was due to the following causes:

The rapid development of the national highway system and the greatly extended truck operations in 1926-27, as a result thereof, enabled many of the Champlin
396 customers; and particularly those in Kansas and Nebraska, to obtain their products from Kansas and other nearby refineries at costs less than those for which our products could be delivered to them. The building of the Great Lakes pipe lines, 1931-1932, into our market, by six refining companies in Oklahoma and Kansas, and the building of the Phillips line at about the same time by the Phillips Company from its refinery at Borger, Texas, with a connection at Kansas City with the Great Lakes line, resulted in the loss of more Champlin customers. In order that it might survive, Champlin built its products pipe line through Hutchinson, Kansas to Superior, Nebraska in 1935. That line was extended to Rock Rapids, Iowa in 1940.

Q. Mr. Leverton, have you prepared a map of the trade territory which you have just mentioned, showing the products pipe lines into that territory immediately after the completion of the first segment of the Champlin line from Enid to Superior, Nebraska?

A. I have prepared a map, which I have marked Exhibit "2", (Witness identifies map) showing the products pipe lines of the Great Lakes Pipe Line Company, Phillips Petroleum Company and the Champlin line as they existed in 1936, these being all of the lines into this trade territory at that time. This map includes the states of Minnesota, Iowa, Nebraska, Colorado and Kansas and
397 South Dakota, which constitute our natural trade territory. Approximately two-thirds of our refined products are sold in these states, the remaining one-third being sold in Oklahoma and Texas. The loss of our markets in this territory which I have just described, occurred on account of trucking from the refineries located principally in Kansas, (Witness indicates) and from barge terminals along the Mississippi River. After the completion of the Great Lakes and Phillips lines, the loss of our markets became acute.

The Great Lakes line originated and served refineries located in Ponca City, Tulsa, Barnsdall, Muskogee and Okmulgee, Oklahoma, as well as Eldorado, Kansas, which by

inadvertence was omitted from this map. That pipe line was also connected with the Phillips refinery at Kansas City and with the Phillips line which originated at its Borger, Texas refinery. These refineries had a combined manufacturing capacity exceeding 175,000 barrels per day.

As shown by this exhibit, the Great Lakes at that time had pipe line terminals for the delivery of products at Kansas City, Kansas, Council Bluffs and Des Moines, Iowa, Whiting, Indiana and Minneapolis, Minnesota. The Phillips line made deliveries at Kansas City and St. Louis, Missouri, and in addition to its connection with the Great Lakes line. All of this huge refining capacity was made available into our trade territory through these terminals, at prices
398 less than we could deliver our products into the same territory until the completion of our line through Hutchinson, Kansas to Superior, Nebraska when we were able to compete price-wise in Kansas, Nebraska and a part of South Dakota.

The location of our line demonstrates the fact that ours was an effort to regain the business that we had lost in the agricultural sections of Kansas, Nebraska and a part of South Dakota, and was not an attempt to obtain new business. Being a small company, our trade has always been largely confined to the farm sales and small communities. We have not had the resources to compete with the major companies in the metropolitan areas. As you will note from Exhibit 2, and from the pipe line maps which we will introduce later, our terminals are located in small communities serving agricultural areas, whereas the pipe lines of the major companies have their terminals located in the larger cities in this trade territory.

The Great Lakes and Phillips lines have been common carriers from their inception and are marked in red on this exhibit to show the distinction between them and the Champlin line, which has always been a private line used as a plant facility. This map shows that even at that early date, common carrier products pipe line transportation was available to any refinery which wished to make use of it. All refineries which did so, solved their marketing problem by using the common carrier line. The exhibit further
399 illustrates that the Champlin Company, on the other hand, had solved its problem by constructing a private pipe line, and we expect to show later that this line is needed, in its entirety, for the Champlin products, and that

the use of the line by any other refinery would mean confiscation of our markets. It is evident from the enormous refinery capacity in Kansas, Oklahoma and Texas, that if we had been compelled to transport for these other refineries even a small fraction of the production which they were capable of tendering to us, our line would have been completely devoted to the business of our competitors and that we would have been defeated in our purpose to reestablish the markets which we had lost.

Mr. GLASSER: We now offer Exhibit No. 2 in evidence, as a part of the direct testimony of this witness.

Exam. KELLEY: Let the record show it has been marked for identification as Respondent's Exhibit No. 2.

(Respondent's Exhibit No. 2, Witness Leverton, marked for identification.)

Q. (By Mr. GLASSER) What was the subsequent history of the products pipe line development in the trade territory which you have just described?

A. As soon as the Champlin Company was financially able to do so, we extended our line to Rock Rapids, Iowa and established a terminal outlet at that location. The common carrier lines were greatly expanded and ex-
400 tended and a few private pipe lines were also built.

Q. Have you prepared such an exhibit showing the products pipe lines as they exist in this trade territory, today?

A. I have prepared such an exhibit which I have marked Exhibit 3 for reference. On this exhibit, the common carrier lines are also marked in red and the private lines are in blue. This map also shows the location of the numerous refineries, the pipe line terminals and the barge terminals. This map is accompanied by a list of the refineries, which list is marked Exhibit 3-A, which are numbered to correspond with the numbers shown in the green triangles indicating their respective locations. The map is also accompanied by a list of barge terminals likewise numbered, which list is marked Exhibit 3-B. Under the interpretation legend, the various products pipe lines are indexed by letters and the products pipe line terminals are indicated by brown squares in which the ownership is indicated by letters corresponding to those opposite the name of the line under "Legend".

Mr. GLASSER: We now offer Exhibits 3, and 3-A, and 3-B in evidence as a part of the testimony of this witness upon direct examination.

Exam. KELLEY: Let the record indicate they are marked for identification as Respondent's Exhibits 3, 3-A, and 3-B.

(Respondent's Exhibits No. 3, 3-A, and 3-B, Witness Leverton, marked for identification.)

401 Mr. GLASSER: These exhibits being related, are offered together.

Please proceed, Mr. Leverton.

The WITNESS: You will note, with reference to the Great Lakes Line, that in addition to the eight companies which now own the line, this line now serves eleven other refineries.

Q. (By Mr. GLASSER) What are these refineries? Please name the non-owner shippers and the location of their respective refineries connected with the line.

A. The Cooperative Refinery Association at Coffeyville, Kansas; Eldorado Refining Company, Eldorado, Kansas; Kanotex Refining Company, Arkansas City, Kansas; Johnson Oil and Refining Company, Cleveland, Oklahoma; Deep Rock Oil Company, Cushing, Oklahoma; Midland Cooperative Refining, also at Cushing, Oklahoma; Wilcox Oil Company, Bristow, Oklahoma; and Tidewater Associated Oil Company at Drumright, Oklahoma; and Sunray Refineries at Allen and Duncan, Oklahoma.

Q. Please name the owner shippers and the location of their respective refineries connected with the line.

A. Phillips Petroleum Company, Okmulgee, Oklahoma and Kansas City, Kansas; Sinclair Refining Company and with refineries at Sand Springs, Oklahoma and Kansas City, Kansas; Cities Service at Ponca City, Oklahoma; Texas Company at Tulsa, Oklahoma; Continental Oil Company at Ponca City, Oklahoma; Mid-Continent at Tulsa,

402 Oklahoma; Skally Oil Company at Eldorado, Kansas; Phillips Petroleum Company also owns a refinery at Borger, Texas, which is connected with the Great Lakes system by the Phillips line at Kansas City, Kansas.

Q. What are the connections with the Phillips common carrier line as shown on this exhibit?

A. The Phillips line serves its refinery at Borger, Texas and the Shamrock Refinery at McKee, Texas and has a connection with the Great Lakes Pipe Line and can serve all the refineries that are connected to the Great Lakes line.

Q. What other common carrier lines are shown on the map?

A. As the map shows, the Wyko originates at Casper, Wyoming and runs through Glenrock and Cheyenne to Den-

ver. The Phillips line, which originates at Borger, Texas, has been completed to La Junta, Colorado and authorized to Denver. There is also a Sinclair line which originates at Corpus Christi and joins the Sinclair line which originates at Houston, Texas and runs north through Dallas, Texas, the State of Oklahoma, Kansas City and east to St. Louis. That line has been authorized and partly completed and is in operation as far north as Dallas. The Humble line originates at its Baytown, Texas refinery and goes as far north as Fort Worth. The Magnolia and Texas Companies each own parts of a common carrier line which operates from Beaumont, Houston and Port Arthur into Dallas. The Gulf Company owns a line that originates at Port Arthur and terminates at El Dorado, Arkansas.
403 The Project 5 line runs from Eldorado to Helena, Arkansas. The Bayou line runs from the Houston, Texas City area east to Baton Rouge where it joins with the Plantation line that runs northeast.

Q. What does this exhibit reflect as to the availability of common carrier pipe line transportation, particularly to our marketing territory?

A. This exhibit shows that if any small refiner in this area desires common carrier pipe line transportation, such transportation is available to it by the building of a connecting line, as Sunray, Kanotex and Wilcox have done.

Q. Will you please interpret the exhibit as to private pipe lines shown thereon?

A. This map shows the Champlin line extended to Rock Rapids, Iowa. In addition to the Champlin line, I wish to call attention to the line of the National Cooperative Association from its refinery at McPherson, Kansas, to its terminal at Council Bluffs, Iowa.

The Globe Refining Company, the predecessor to the National Cooperative Company, had the same problem as did Champlin in protecting its market and solved the problem in the same way as did Champlin, that is, by building a private products pipe line. If the National Co-op line should be devoted by this Commission to the competitors of the Co-operative Company, it would doubtless be as disas-
404 trous to that company as the same ruling would be to Champlin. The same is no doubt true as to the Bell Oil & Gas Company's line, which originates at Grandfield, Oklahoma, and terminates near Wichita Falls, Texas. The Derby Oil Company with its line running from Wichita to McPherson, and the Wood River Refining Company with its line from Peru to Rockford, Illinois, have likewise each

provided the one means to reach their respective markets. These companies, Champlin, National Co-operative, Bell, Derby and Wood River, are not only finding a market for their products, but are in fact carrying their products into the only markets which they have. The few major company-owned products pipe lines shown on this map, on the other hand, serve the purpose of supplying only some part of their vast market area, while the smaller companies, (which I have just enumerated) are moving their output to the only market which they have.

The Sunray and Wilcox Companies have built and have in operation a pipe line originating at Duncan, Oklahoma, which runs east to Allen and north through Bristow and connects with the Great Lakes common carrier pipe line near Cushing, Oklahoma.

It must be remembered in this connection that many small refiners find a ready market for all of their products in the immediate vicinity of their refineries and have no occasion or use for distant pipe line transportation.

405 In connection with this Exhibit 3, I want to call attention to an error that was made which originally showed a products line owned by the Texas Company running north from Port Arthur to Benton Junction, Arkansas, and also a Gulf line running from Port Arthur to Houston. These lines have been taken up and were erroneously shown on this map.

Q. Have you prepared an Exhibit which illustrates the conditions which you have just described?

A. Yes. I have prepared a map which has been marked Exhibit No. 4, designated "Capacities of Products Pipe Lines Terminating in the Middle West." Exhibit 4 covers the same area as Exhibit No. 3, and the capacities of the respective pipe lines are illustrated by the width of the respective lines. The common carriers are in red and the private pipe lines are in blue. The terminal delivery stations along the pipe lines are indicated by circles with the names of the respective towns shown.

Q. What does this exhibit show as to the availability of common carrier pipe line transportation in the trade territory here in question?

A. This exhibit shows, as did Exhibit 3, that if any small refiner in this area desires common carrier pipe line transportation, the same is available to it.

Mr. GLASSER: We now offer Exhibit No. 4, in evidence, as

a part of the testimony of this witness on direct examination.

406 Exam. KELLEY: It will be marked as Respondent's Exhibit No. 4.

(Respondent's Exhibit No. 4, Witness Leverton, Marked for identification.)

Q. (By Mr. GLASSER) Have you prepared a further exhibit showing graphically, the refineries' capacities available to the lines shown on Exhibit 4?

A. I have another map that covers the same territory as Exhibits 2, 3, and 4, and which has been marked Exhibit 5. Exhibit No. 5, is designated, "Capacity of Products Pipe Line Shippers". The relative sizes of the refinery capacities available to the respective pipe lines are indicated by the diameters of the circle.

In Kansas there appears one large circle and three small circles. The large circle represents the capacity of the refineries situated in Kansas delivering products into the Great Lakes lines. Inside the circle appears the words, "Great Lakes Shippers—Kansas". Below these words, "98,500 barrels", which is the total capacity of these refineries. Below these figures representing the capacity of the refineries, appear the numbers 51, 52, 15, 21, and 44. These numbers refer to the names of the companies shown on Exhibit No. 3A, which companies own those refineries connected to the Great Lakes pipe line in Kansas. Above the next largest circle appears "Socony-Vacuum—Refinery 53

407 —23,750 barrels." That likewise represents the name of the owner of the pipe line and the number refers to the refinery listed on Exhibit 3A and its total capacity. The same explanation is applicable to the circle opposite which appears National Co-op, and also the smaller circle opposite Derby.

In Oklahoma appear three circles and in northwest Texas appears another. Just south of Oklahoma is a small circle above which is Magnolia—Refinery 36. The names and figures in Oklahoma and two north Texas circles are of the same character as those described concerning the circles in Kansas.

Along the Gulf Coast appear seven circles, in which appear the names of the cities along the Gulf Coast. Inside those large circles along the Gulf Coast, appear the names of the towns and figures representing the total capacities of the refineries located at each. The refineries and lo-

cation are identified by numbers, which also refer to Exhibit 3A.

The refiners listed in Kansas, Oklahoma and North Texas are only those that are now or have been available to and ship through pipe lines originating in these respective areas. The capacities of the refiners shown for the Gulf Coast area are those refiners available at the point of origin of the respective pipe lines. The Kansas refiners now delivering products by Great Lakes pipe line out of that state, have a total refining capacity of 98,500 barrels per day. Those refiners now delivering into the Oklahoma section of the Great Lakes line, have a total capacity of 192,500
408 barrels per day.

It is apparent that, if Champlin were made a common carrier sufficient products could, at the will of these refiners, be tendered to our line so as to entirely deprive us of our ability to market our own products.

Mr. UNDERWOOD: I think, Mr. Examiner, we are now getting into the realm of speculation and hypothesis, and I take it that this and some of the other text which will follow is of the same character and I object to it as incompetent.

Mr. GLASSER: If your Honor please, the Witness is an expert and highly qualified and is merely interpreting an exhibit for the convenience of the court.

Exam. KELLEY: He is speculating on what would happen if Champlin were made a common carrier. It seems to me that the Supreme Court has said that they are a common carrier for the purpose of evaluation, at least, and perhaps for other purposes under the Interstate Commerce Act.

I see no objection to his speculating on it in the face of the decision. We will proceed with your objection noted on the record, Mr. Underwood.

The WITNESS: Just as one illustration of the possibilities, I might point out that 230,000,000 gallons of pipe lineable products were sold in Southwest Nebraska in 1947, Continental Oil Company, one of the Great Lakes owners, sold 8.7 million gallons of petroleum products in that area
409 during the same period under their own name, as shown by the tax records of the state. The same company doubtless sold substantial quantities in excess of this figure to jobbers, although the exact figures are not available. It is already apparent that if our line were compelled to accept all tenders, this one company alone could use a substantial part of our pipe line capacity and thus deprive

us of a substantial portion of our own markets in that territory.

At Borger, where the Phillips line originates, there are 48,000 barrels per day of refining capacity, plus 26,000 barrels per day of natural gas products produced by Phillips. It will be noted on Exhibit "4" that the Phillips line with a capacity of 44,300 barrels crosses the Champlin line some 20 or 25 miles south of Hutchinson, Kansas. Phillips, with little effort, could tender Champlin more than its daily capacity out of Hutchinson at any time it might elect to do so.

In the Gulf Coast area, there is an aggregate refining capacity of 1.17 million barrels per day. Exhibit No. 4 shows common carriers now in existence running from the Gulf Coast as far north as Fort Worth and Dallas for a total daily capacity of 91,000 barrels. With reference to these capacities, the Sinclair line has been equipped to handle 50,000 barrels, and the present 25,000 barrel capacity of the Texas line could no doubt be likewise increased. The capacity of the Humble 8-inch line coming into Dallas
410 could likewise be materially increased by the addition of pumping facilities. Magnolia has also pioneered a line from Dallas through Fort Worth to Oklahoma City and more may follow. The Sinclair line originating on the Gulf Coast, to which I just referred, will come through Oklahoma in the vicinity of Shawnee and will cross the state at a distance of approximately 100 miles from Enid.

For another example of possibilities, let us go back to the marketing area in southwest Nebraska. Many of the companies owning the Gulf Coast Refineries, supplied a substantial portion of gasoline and other products consumed in that marketing area in 1947. Sinclair and the Texas Company alone marketed under their own names, 18 million gallons in that area according to the Nebraska Tax Records. The same causes which prompt our apprehensions as to Phillips and Continental exist as well in the cases of Sinclair and Texas, if we are to be compelled to carry the products of our competitors.

It is readily apparent in any event, that the products from the 1.17 million daily refining capacity on the Gulf Coast, could at an expense comparatively small for those companies, by completing a connection with our line, materially impair, if not wholly destroy, our utilization of our own line. This would no doubt be equally true of a connection

tendered to the National Cooperative line at Mc-
411 Pherson, or to any other small line in a similar situation.

I have recited the examples used to show the distinct possibilities, and I think probabilities, which exist if any company is to be permitted to tender to the smaller private pipe lines, sufficient quantities of petroleum products to seriously impair the ability of the smaller company to market its products in the only trade territory it may have.

Mr. GLASSER: We now offer Exhibit No. 5, in evidence, as a part of the testimony of this witness, on direct examination.

Exam. KELLEY: It will be marked for identification as Respondent's Exhibit No. 5.

(Respondent's Exhibit No. 5, Witness Leverton, marked for identification.)

Q. (By Mr. GLASSER) Have you prepared an Exhibit showing the capacities of the refiners originating products pipe line movements in Kansas, Oklahoma and North Texas?

A. Yes, I have a bar chart marked Exhibit No. 6, showing the capacity of the refiners originating products pipe line movements in Kansas, Oklahoma and North Texas. This Exhibit shows the name, location and the refining capacity for each refiner which are grouped according to the pipe line or the portion of pipe line for which they provide originating shipments. The three bars to the left indicate the refining
412 capacity of the refineries connected to the Great Lakes and Phillips pipe lines which are common carriers. The six bars to the right show the refining capacity of the single refiners served by each of the privately owned pipe lines. This chart further illustrates the ease with which the huge refining capacities of the companies owning common carrier lines could be diverted so as to destroy the usefulness of the private lines as competitive agencies.

Q. I understand that the capacities shown on Exhibit No. 6, are the capacities of those refiners which are now actually connected with the pipe lines referred to on that chart. For example, Exhibit No. 6. shows the Texas Company with a refining capacity of 20,000 barrels, this being the only Texas Company refinery actually connected with the Great Lakes pipe line. Am I correct?

A. Yes, that is correct.

circulated among the trade. However, over a period of time they become generally known through their inevitable effect on the tank wagon market and by the solicitation by competitors of our own jobber customers.

Q. Does this also apply to your competitive situation at Rock Rapids, Iowa?

A. Yes, it is equally applicable there.

Q. Will you please explain further what competitive factors influence the fixing of your terminal prices at Rock Rapids?

A. On sales from our Rock Rapids terminal, I wish to again refer to the map which has been identified as Exhibit 16 and to again emphasize the concentration of product pipe line terminals which reflects the competition which we have to meet in that area. You will note from this map that there are four pipe lines other than Champlin's which serve terminals in this general area.

440 It is the concentration of these pipe lines in this area with terminals at Sioux City and Sioux Falls and with the Great Lakes' additional terminals to the east and north which establishes the price competition at Rock Rapids, Iowa, and at the points to which deliveries are made out of this terminal. You will note that this intensive local competition has resulted in our fixing a lower price at Rock Rapids, Iowa, than we have for our terminal at Superior, Nebraska, even though it is some 260 miles along the line beyond Superior, Nebraska.

These different net prices are plotted also on the map which has been marked Exhibit 16. From this Exhibit you will note a more uniform system of zones around the Rock Rapids terminal. This is true because, first, Rock Rapids is substantially the geographical center of our marketing area in Iowa, Minnesota and the Dakotas and, secondly, located in the vicinity of Rock Rapids, at both Sioux City and Sioux Falls are six pipe line terminals on the Great Lakes, Socony-Vacuum and Standard of Indiana lines which supply most of our competition in this immediate area.

Q. Do you know at how many points supplied out of Rock Rapids, you have these different prices?

A. 117 points at the straight Rock Rapids price; 32 points at ⅛ cent off; 56 points at ¼ cent off; 12 points at ⅜ cent off; 4 points at ½ cent off. None at a greater reduction.

441

Q. Now I believe you have been testifying as to how you fix your prices to your jobber customers. Is that right?

A. Yes.

Q. Do you have contracts with these jobbers?

A. Yes.

Q. Do you have any of these contracts available?

A. Yes. These forms of contract which have been identified as Exhibits 17, 18 and 19 are the types of contracts which we now have with our jobber customers for deliveries out of the three terminals at Hutchinson, Kansas, Superior, Nebraska and Rock Rapids, Iowa, respectively. Attached to each are the documents representing a single sale and delivery under this contract. The only difference between these contracts is in the price provision. For instance Exhibit No. 17 reflects our terminal prices at Hutchinson, Kansas, Exhibit No. 18 reflects our terminal prices at Superior, Nebraska and Exhibit No. 19 reflects our terminal prices at Rock Rapids, Iowa, with the appropriate allowances being shown in each case. All of the jobber contracts are on the same form.

Mr. GLASSER: We offer Exhibits No. 17, No. 18 and No. 19 separately as a part of the testimony of this witness on direct examination.

Exam. KELLEY: They will be marked for identi-
442 fication as Respondent's Exhibits No. 17, No. 18 and No. 19.

(Respondent's Exhibits No. 17, No. 18, No. 19, Witness Leverton, marked for identification.)

Q. (By Mr. GLASSER) Do you have any contracts outstanding on any other form?

A. No.

Q. Will you please explain the price provision in Exhibit No. 18?

A. Exhibit No. 18 is a typical jobber contract for delivery at Superior, Nebraska. Here we have a terminal price for Champlin Presto gasoline, which is our regular house brand gasoline, at Superior of 12¼ cents per gallon. This is the same price which is set forth in our price list for this terminal which has already been introduced as Exhibit No. 14.

Now, Seger Oil Company, the jobber identified in this contract, has bulk plants at O'Neill, Ainsworth, Valentine and Spencer, all in Nebraska. As he picks his products up at Superior for transportation by tank truck to these bulk plants, if it were not for the allowance, the ultimate cost to him at his place of business would be our Superior terminal price plus his cost of moving the products from Superior to these bulk plants. Because this cost would

not permit him to meet this local competition, it is necessary that we make certain allowances to him for the four places in which he is engaged in business. For two of these destinations we allow him one cent off of the
443 Superior price and for the other two points ¾ cent and 1¼ cents respectively off of the Superior price. This means he pays us on regular grade gasoline a net price, at Superior, of 11½ cents per gallon for deliveries for O'Neill, 11¼ cents per gallon for deliveries for Ainsworth and Valentine and 11 cents per gallon for deliveries for Spencer.

You will note that there is no provision in this contract under which the price will increase or decrease with any change in the cost to us of the movement of this product by pipe line to Superior. Our only right to change the price is in the full paragraph at the bottom of the first page of the contract, which we commonly refer to as an escalation clause and which provides that the Rock Rapids terminal price will increase or decrease with the published price in the Chicago Journal of Commerce for products of a similar grade but that such escalation clause will not operate with respect to any change of price less than ⅛ cents per gallon.

I wish to add that never in practice do we make any changes in our price structure dependent upon increased or decreased cost of operation of our products pipe line either in spot sales or contract sales. For example, we have had marked increases in the wage schedule of our pipe line either employees, and there have been marked increases in other pipe line costs.

None of these increased costs have been used as
444 a basis for increasing the price of our products. These prices are based entirely on competitive marketing conditions without reference to costs of pipe line operations.

Now, I wish to refer to pages A, B, C and D, which are attached to Exhibit 18 and which are the instruments evidencing a single sale for O'Neill, Nebraska, under this jobber contract, which we have just been talking about. Page C is an order submitted by the customer, you will note that this is not even his own form. Sometimes the customer uses a printed order form, sometimes a letter and sometimes his driver comes down and just says he wants so many gallons of regular gasoline. Page D is our form of loading ticket showing our delivery to the customer's driver of 4140 gallons of Presto, our regular grade

of gasoline. Page B is a copy of Champlin's form approving this sale. Page A is an invoice under which 4115 gallons, which is after adjustment of 4140 gallons for temperature, at 11½ cents per gallon was billed to the customer at a total net price of $473.21, plus $61.73 Federal Tax.

Q. Is there any reference on either the contract or on any of these orders, loading or invoicing forms for a charge for the movement of this 4115 gallons from Enid to Superior by pipe line?

A. No such charge is made.

Q. Are the signed contracts and attached forms
445 representative of the forms of contracts and other papers used in contracting with and making deliveries to other jobbers?

A. They are. Exhibits No. 17 and No. 19, with attached papers, represent similar transactions with jobbers taking deliveries at Hutchinson and Rock Rapids.

Q. Have you always priced your products on this basis?

A. No.

Q. Will you please explain how you priced these products before?

A. At the time our line was constructed, our customers were buying their products f. o. b. Enid, in most cases, in railroad tank cars with freight collect to their places of business. On the construction of the line, we continued to sell them on an Enid base price, adding to this base price an amount which, for want of a better term, we termed a differential.

For Kansas, our prices were fixed as follows: As Kansas customers faced the direct competition of the Kansas refineries, we fixed this differential for Kansas at an amount which, when added to our Enid price, equalled the established Kansas refinery price. This was true, except for Hutchinson where we kept the differential ⅛ cent higher and at Wichita where we kept it lower, all for reasons I have heretofore explained in my testimony.

In preparing our prices for sales out of the pipe
446 line terminals at Superior and Rock Rapids, we made up differential tables for use in determining the prices at which the products would be sold at such terminals. These tables were prepared on a uniform theory; that is, the Enid price was used as a base and to this Enid price was added rail freight from Enid to the customer's place of business, less rail freight from our terminal to the customer's place of business. So that these tables would be available for any possible customers,

they were made to cover every town in the states of Nebraska, Iowa, South Dakota, North Dakota and Minnesota.

However, in practice, we sold products to customers in only a small percentage of the towns shown on the tables. The other locations, comprising fully 80 percent of the towns listed on these tables, proved to be surplusage and meant nothing. These are the tables which were introduced in evidence in the former hearing.

At the very outset of our sales from these terminals, it was proved that prices based upon rail freight could not be used. To base our net price on rail freight, left us in no better competitive position than we had been before the line was constructed, and it was therefore obvious that our net prices had to be modified.

Accordingly, as we continued to operate in this area, variations were made in these differentials to the point that on May 9, 1948, just prior to the change in our
447 pricing system, not one of them was based on rail freight.

Q. Have you prepared a table showing the relationship on May 9, 1948 of the differentials which you have just described, to rail freight rates?

A. Yes, I have prepared such a table identified as Exhibit No. 20, covering all destinations at which we had customers served by our terminals. The column on the extreme right of this Exhibit demonstrates that our differentials had been so completely modified that not one of them was based on rail freight. The purpose of the first four columns is to show a comparison of the actual differentials in effect on May 9th, and those in effect on the date of the hearing of the original valuation case. The two columns on the right are for the purpose of showing the ratio of the differentials in effect on May 9, 1948, to freight rates. This exhibit, I might add, conforms with a request made by Mr. Underwood.

Mr. Glasser: We now offer Exhibit No. 20 in evidence as a part of the testimony of this witness on direct examination.

Exam. Kelley: It will be marked for identification as Respondent's Exhibit No. 20.

(Respondent's Exhibit No. 20, Witness Leverton, marked for identification.)

Q. (By Mr. Glasser) What prompted you to make this change in May of this year?

A. The differential system, especially where based on

448 rail freights, did not represent a realistic price formula. By this system, we started out trying to set and maintain our own prices in this area. This we could not do for the competitive reasons I explained earlier in my testimony. Even before the Valuation Case was tried, we had come to this realization. In January, 1946, we tried revising our differential system by retaining the Enid base price, but computing the differentials on concentric zones fanning out from the Rock Rapids terminal. This still didn't meet competitive situations on a local market basis.

Q. Was any study made of these local competitive situations before you made this change to your present pricing system?

A. Yes. In the spring of 1948, we called to our Enid office our sales supervisors located in this marketing area. We carefully reviewed with them the general market conditions in this territory and the price situation at each location at which we had a customer in business.

We realized that to effectively set up a sound marketing structure for the post war period, we would have to establish a price which would be competitive at each of these locations. On this basis we established our terminal prices with allowances off of these terminal prices to meet local competitive conditions. This led to our present terminal prices and allowances.

Q. Do you now compute any of your prices to any
449 of your customers at any of these terminals on an Enid base price?

A. No. The use of an Enid base price for selling at our terminals has been completely abandoned.

Q. Do you now use a differential in computing your price to any of these customers?

A. No. We are not pricing any of these customers by either building up on an Enid base price, or by using a differential. Their terminal prices are individually figured entirely on what will permit them to be competitive at their individual places of business.

Q. Do you ever show on any of your contracts with any of your customers, a charge for transportation by pipe line?

A. No.

Q. On any of your invoices?

A. No.

Q. On any of your own company records?

A. No. What we do is to set a destination price, which

will be competitive. There is no charge to the customer for transportation.

Q. Now, you have been telling us how you price your gasoline at these terminals. What other products do you sell at these terminals, which move through the pipe line?

A. Kerosene, tractor fuel and burning oils.

Q. How are they priced?

A. On an established terminal price, with an al-
450 lowance therefrom to meet competition when neces-
sary.

Q. On the same basis, then, as gasoline?

A. Yes.

Q. Where do you get these products?

A. We withdraw them from terminal storage.

Q. Where do you get them originally?

A. We obtain them from our Enid refinery.

Q. How do the products move from Enid to these terminals?

A. By our products pipe line.

Q. Are these three terminals, Hutchinson, Kansas, Superior, Nebraska and Rock Rapids, Iowa, the only terminals you have along the pipe line?

A. They are.

Q. In what quantities are different grades of products normally moved through the pipe line?

A. They normally move in batches of from 30,000 to 40,000 barrels. However, with the present shortage of products in the market, we are running them through the line at times in batches as small as 10,000 barrels.

Q. What do you mean by batches?

A. That is the amount of any one product moved at one time.

Q. Does anything other than the need of products at the terminals determine the size of these batches?

A. Yes. Our line is run as a facility to the refinery. At
any time the refinery storage of a particular prod-
451 uct reaches capacity, we try to move this product
out of refinery storage and store it at one of the terminals along the line. Frequently the line is running a large batch of, say, gasoline, which if completed might take five or six days, when the dispatcher is requested to interrupt this run to move some other product to relieve refinery storage on this other product. Or, maybe this same movement may be interrupted to run a batch of product up to a terminal where there is a present shortage of that product at the terminal.

Q. Do you have any seasonal scheduling of products through the line?

A. Yes. Under normal conditions, we try to build up our terminal storage of burning oils in the late summer and early fall to meet the winter demand and we try to build up our terminal storage of gasoline in the spring to take care of the summer demand.

Q. Is any record made of the dispatch at the refinery of one of these batches?

A. Yes. We keep what is really a daily inventory form of the products in the pipe line, showing the product and the amount thereof put in the line at the refinery and the product and the amount thereof taken out at any one terminal in any one day.

Q. Do you have a copy of one of these forms with you?

A. Yes, here is one which has been marked Exhibit No. 21.

452 Mr. GLASSER: We offer Exhibit No. 21 in evidence as a part of the testimony of this witness and upon direct examination.

Exam. KELLEY: It will be received and marked for identification as Respondent's Exhibit No. 21.

(Respondent's Exhibit No. 21, Witness Leverton, marked for identification.)

Q. (By Mr. GLASSER) Now, will you please explain this exhibit?

A. This is one of these forms for June 2, 1948. In the left hand column, captioned "Enid", this form shows that the guage on the tank which we were pumping out of into the pipe line at the start of the day, read 30,971.75 barrels. Now, at the end of the day, a gauge on this same tank read 21,233.10 barrels. Our identification of the product being pumped, appears at the bottom, "Que". This means regular gasoline. Consequently, during that day 9,738.65 barrels of regular gasoline were pumped into the line from Enid storage. The figures under the heading, "Corrected Barrels" represent an adjustment of the gauge readings for temperature.

Now, the column under the caption, "Hutchinson" shows the product and the amount thereof withdrawn from the line into Hutchinson terminal storage on that same day. The name and amount of the product is identified the same way it was at the refinery. This shows 3,362.68 bar-

453 rels of regular gasoline withdrawn into terminal storage at Hutchinson on that day. It also shows a small withdrawal of kerosene from the line which was running ahead of the gasoline batch.

Q. Is there anything on this record which shows the customers to whom these products are destined?

A. No. Not only is this not reflected on this record, but we don't know ourselves. In fact, we are not sure when the product is placed in the line at Enid how much will be withdrawn at each terminal enroute. Current demand and availability of storage determine this.

Q. Is any other record kept by the company covering the product moving through the pipe line?

A. No.

Q. Where does the information on this report come from?

A. Hourly gauges of the tanks at the refinery and the terminals and hourly reports on these gauges by phone into our Enid office.

Q. Is there any intermingling of batches in terminal storage?

A. Yes. Certain tanks are used for the storage of certain products. We try to keep products in these tanks. When a batch of a particular product comes through, it is pumped into a terminal storage tank assigned for that product. When that tank already has product in it, which is usually the case, there is necessarily an intermingling of several batches of the same product in the tank.

454 Q. When product is withdrawn from the tank, is there any way to tell in what batch it moved through the pipe line?

A. That is impossible where there has been any intermingling of batches in the tank. Even where there is no such intermingling, it is immaterial, because we are selling the product at the terminal.

Q. With respect to jobber customers, how are orders placed?

A. He places his order with the terminal where he picks up his product. As I have said, this may be on a formal order form, by letter and sometimes merely on the oral order of the customer's driver.

Q. Have you with you a record of such a transaction?

A. Yes, sir. Page C attached to Exhibit 17, pages C and D attached to the Exhibit "18", and pages B and D attached to Exhibit No. 19, are orders and loading tickets representing typical orders and deliveries at Hutchinson, Superior and Rock Rapids respectively.

Q. Do these orders or delivery tickets in any way indicate the pipe line batch in which the product moved by pipe line into storage?

A. No. As you can see, the loading tickets merely indi-

cate so many gallons withdrawn from terminal storage. As I have said before, there may have been several batches intermingled in the same storage tanks and it is impossible to tell out of exactly which batch the product came.

Q. I believe you said the usual batch moved through the line ran from 10,000 to 40,000 barrels?

455 A. That is right.

Q. Now, in what amounts do jobbers usually withdraw product from terminal storage?

A. By transport truck in quantities from 1,500 to 4,000 gallons, or, translated into barrels, there being 42 gallons to a barrel, approximately from 35 to 100 barrels.

Q. Is there any difference in the method of handling between gasoline, kerosene, tractor fuel and burning oils?

A. There is no difference.

Q. And is this equally true as to the procedures for ordering loading and invoicing?

A. Yes.

Q. What storage do you have at these three terminals?

A. At Hutchinson, 161,000 barrels, at Superior 191,000 barrels, at Rock Rapids 330,000 barrels.

Q. What is your present pipe line capacity between Enid and Hutchinson?

A. 9,800 barrels a day.

Q. Now, on that basis, starting out from scratch, how many days storage do you have at Hutchinson?

A. Based on pipe line operation and Hutchinson storage only, theoretically, 16 odd days.

Q. What is your present pipe line capacity between Hutchinson and Superior?

A. 6,400 barrels a day.

456 Q. How many additional days storage would this give you at Superior?

A. Theoretically, that would give us an additional 29 odd days of storage.

Q. What is your present pipe line capacity between Superior and Rock Rapids?

A. 5,500 barrels a day.

Q. And adding Rock Rapids storage?

A. Theoretically, that would add 60 days more, giving us a total storage equivalent to 105 days operation of the pipe line.

Q. Why the qualification, "theoretically"?

A. The figures which I have just given would be correct if we were moving only one product through the line to one terminal. However, we are actually moving different products, each of which required separate storage.

Further seasonal requirements, such as gasoline in summer and fuel oil in winter, also cut into this picture. As a result, we have to schedule our storage by product and by season. I have already explained our normal procedure and problems in scheduling terminal storage.

Q. Do all products move by the pipe line move into terminal storage?

A. They do.

457 Q. Is there any connection by which products could move directly from the pipe line to the loading rack used for loading tank cars and transport trucks?

A. There is no such connection.

Q. Have these products in storage at these terminals ever been assessed for personal property tax purposes?

A. They are regularly assessed each year in all three states; Kansas, Nebraska and Iowa.

Q. Are they assessed to the Champlin Refining Company, or to its customers?

A. They have always been assessed on assessment date to the Champlin Refining Company.

Q. Has any part of it ever been assessed to any of Champlin's customers?

A. No.

Q. Now, is there any pipe line through which refined products owned by Champlin move, other than the line which we have been talking about?

A. No, except for local pipe lines located on our refinery property through which these products move from the stills to refinery storage.

Q. Is the pipe line to Rock Rapids directly connected with the refinery stills?

A. No. It is connected with the storage tanks located on the refinery property.

458 Q. Is there any more of an allocation of product to individual customers while it is in the through line to Rock Rapids, than when it is in the refinery line from the stills to refinery storage?

A. No. There is no allocation of product to any customer until it has been withdrawn from terminal storage where the customer picks up his product at a terminal.

Q. Is there any relationship between refinery and terminal storage?

A. Yes. As I have said before, whenever our refinery storage for any one product becomes filled, we have to move some of that product through the line to terminal storage to relieve our refinery storage, even though that means

interrupting the movement of a large batch of another product then in progress. An example of this is the summer accumulation of burning oils for winter sales. The refinery burning oil storage tanks periodically become full. In that event the interruption of pipe line operation and transfer of burning oils to terminals just referred to, becomes necessary.

Q. Is any change made in the nature of the product after it is withdrawn from the pipe line into terminal storage?

A. We have always done some blending and treating of our products in these terminals. We are now constructing Ethyl plants at the Superior and Rock Rapids terminals. These plants will each cost approximately $30,000. When completed, they will be used for the purpose of
459 further processing, treating and preparing for sale approximately 20 per cent of the gasoline stored at these points. These plants were ordered some five months ago, but due to the shortage of materials, completion has been delayed until the middle of September.

Q. Now, Mr. Leverton, has the Champlin Company ever made any sale from Enid of the products which are moved through your products pipe line?

A. No. All sales of products moved through the pipe line are, and always have been, made out of the tanks at the terminals.

Q. Does Champlin own all of the products which are moved through the line?

A. Yes.

Q. Are all of these products refined at your Enid refinery?

A. Yes.

Q. Are any of the products which are moved through the Enid purchased by Champlin from anyone else?

A. No.

Q. Have you ever had an arrangement with any other company under which you exchanged at any of your pipe line terminals products which have moved through your line for products which are supplied to you by another company at another point?

A. No.

460 Q. Have you ever offered to carry products for any other company or person?

A. No. I wish to add in this connection that our products pipe line was built to handle Champlin products exclusively and that there is no physical connection on our line with the line or tanks of any other company.

Q. Have you ever filed tariffs with the Interstate Commerce Commission, or any state commission, or any other government body with reference to the movement of products through this line?

A. No.

Q. Have you ever offered to carry products through this line for the public?

A. No.

Q. Has any other company or person ever made a tender of products through the line?

A. No.

Mr. GLASSER: Let the record show that that completes our case. We now offer the witness for cross examination.

Exam. KELLEY: We will go off the record.

(Discussion off the record.)

Exam. KELLEY: On the record.

Cross Examination.

Q. (By Mr. UNDERWOOD) Mr. Leverton, referring to page 9 of your testimony where you speak of decline in
461 your sales in 1926, which you indicate was a rather serious predicament that, as I understand, it caused the company to build the pipe line?

A. Eventually it led up to that, yes.

Q. That was completed in 1935 to Superior?

A. Yes, sir.

Q. And in 1940 to Rock Rapids?

A. Yes, sir.

Q. After that pipe line was opened, your situation changed for the better, materially, didn't it?

A. Yes, sir. We were able to gain considerable business, particularly in Nebraska.

Q. And so you were encountering competition all along, both before and after the pipe line was constructed, were you not?

A. Yes.

Q. That still continues?

A. Yes, sir.

Q. Has there been any diminishing in your receipts and profits from the sales and the pipe line operation reasonably over what it had been when it was first put into operation?

A. Of course, in the last two years, three years since the war ended, the demand has been so great that we could sell anything we had anywhere. We are selling products.

Q. When this pipe line was first opened, what was
462 your pricing system?

A. After it was opened, it was on the basis of a differential, of adding a differential to the Enid price.

Q. That continued up to May 10, 1948?

A. Yes.

Q. Then you changed over to what you call the—what do you call it?

A. The terminal price.

Q. In your testimony about your prices and things of that sort, does that testimony relate to spot sales or just contract sales?

A. To present sales, there are not a great many spot sales. The method of pricing would be applicable to any kind of sales that we have at the terminals.

Q. That is, the terminal pricing?

A. Yes, sir.

Q. A considerable part of the testimony I previously was dealing with concerned what your situation would be if you had to deal with or transport for some one other than your customers? You understand what I am referring to, what I mean? If your pipe line was opened up to others other than customers?

A. To other refineries?

Q. Let me ask you this question; Did you have something to do with your bill of complaint in Western Oklahoma where you set aside the valuation case order?

463 A. Yes, sir, I knew about it.

Q. In paragraph 12 of this complaint the allegation was made that you had not, that no person, firm or corporation has ever demanded or requested the services of the said pipe line for the storage handling or transportation of petroleum, petroleum products or any other commodity. That is the first part of it. That was back in 19— when was that suit filed? Can you tell me?

Mr. Glasser: August 10, 1944.

Q. (By Mr. Underwood) August 10, 1944. Would that same declaration or statement be true as of this time, as of this date?

A. I am not sure about the statement.

Q. I will read it: "No person, firm or corporation has ever demanded or requested the services of said pipe line for the storage, handling or transportation of petroleum, petroleum products or any other commodity."

Is that true as of today?

A. I don't know the use of the word, "request."

A. It says demanded?

A. I wouldn't say anybody has ever demanded it yet.

Exam. KELLEY: How would you use it?

The WITNESS: I would say we have been approached on the possibility of using the line.

Exam. KELLEY: Is that the way you want to use
464 the word, "request", and is that the way you have used it?

The WITNESS: I think I would say that we have been approached on the possibility. I don't know whether it would be a request. It was more an effort, saying, "Can we work out a method?"

Exam. KELLEY: Sort of a feeler?

The WITNESS: Yes.

Q. Which were the companies that approached you?

A. The Phillips Petroleum Company asked if some arrangement could be made.

Q. (By Mr. UNDERWOOD) When was that?

A. I think in 1943, possibly 1944.

Mr. UNDERWOOD: What was the date of the bill?

Mr. GLASSER: August 10, 1944 the bill was filed before the 3-J Court.

Q. (By Mr. UNDERWOOD) That is the only one that you know of?

A. No. A little earlier than that, probably soon after our first line was built the question was approached by some of the owners of the Great Lakes Pipe Line, as to whether we would transport their products and they would transport for us, where we wanted to use it. Those were not requests, you understand, or demands. As Mr. Kelley said, they were feelers, I suppose.

Q. You mean just talk, just conversation?

A. I don't think they were just passing away the time, Mr. Underwood. I believe they were serious about
465 the undertaking.

Q. How was that proposal made, that they were to enter into some agreement with you?

A. That is right, whether they could make such an agreement or not.

Q. Did you, in discussing that, take into consideration the possibility of your common carrier status?

A. Yes, I think that would be correct, whether we would be a common carrier or not. It was more a question of whether we could carry their product and more whether we needed the use of their lines.

Q. Will you estimate your costs at which you sell your product? What factors enter into that?

A. At the terminal?

Q. Wherever the price is made.

A. All prices are necessarily based on competition.

Q. I know, but suppose the competition were such that you could not meet it? Would you still deliver it?

A. Would we still deliver it?

Q. Yes.

A. I don't know.

Q. I think you can give me the factors.

Mr. GLASSER: Just a moment. I didn't get the question clearly.

Exam. KELLEY: Read the question.

466 (Pending question read.)

Mr. GLASSER: That is objected to as being wholly irrelevant, immaterial and incompetent. Mr. Leverton does not fix the prices at which the product is sold.

Exam. KELLEY: Who does fix them?

Mr. GLASSER: Of the company, I presume, the ownership, the management.

Exam. KELLEY: Who will testify here as to how those prices are fixed? If Mr. Leverton can't do that, will you have somebody else who can testify?

Mr. GLASSER: I don't know whether we could testify to that or not. That would involve a lot of investigation, a lot of figures.

Exam. KELLEY: Don't you know how you make your prices?

Mr. GLASSER: Do you, Mr. Leverton?

The WITNESS: I think so.

Exam. KELLEY: Go ahead and tell us. That is what we want to know.

Mr. GLASSER: If you know, go ahead.

The WITNESS: If we have a price of, say, five cents a gallon and if a customer says, "I cannot afford to buy the gasoline at that price, I can afford to pay 4.5 cents," that necessarily calls for our consideration, not only of him, but those others in the immediate vicinity.

Exam. KELLEY: Where do you have any price of

467 4.5 cents? Let's deal with actual figures. Tell us some of your prices, what you are doing?

The WITNESS: Well at Rock Rapids, Iowa, today, our price is 12⅛ cents. A customer from Moorehead, Minnesota, comes down and he says, "I would like to buy your gasoline." We would of course like to sell to him but he

Mr. GLASSER: We now offer Exhibit No. 6, in evidence, as a part of the testimony of this witness on direct examination.

Exam. KELLEY: It will be marked for identification as Respondent's Exhibit No. 6.

(Respondent's Exhibit No. 6, Witness Leverton, marked for identification.)

Q. (By Mr. GLASSER) Have you prepared further Exhibit showing the total capacity of all refineries in the United States of the same companies as are shown on Exhibit No. 6?

A. Yes, I have prepared another chart which I
413 have marked Exhibit No. 7, which shows the daily refining capacity of the companies owning products pipe lines, or an interest therein, situate in Kansas, Oklahoma, and North Texas. This exhibit shows the total refining capacity of all the refineries owned by each of the companies in the United States, while Exhibit No. 6 showed only those refineries connected with the pipe lines originating in Kansas, Oklahoma and North Texas. Exhibit No. 7 also shows the refining capacity of the Wood River Refining Company, which owns its own line in Illinois as heretofore referred to and discussed in connection with Exhibit No. 3.

Exhibit No. 7 when compared with Exhibit No. 6, discloses that National Cooperative Refining Association, Champlin, Derby and Bell each use their privately owned pipe lines to protect the only refinery which each owns. Many of the other companies owning pipe lines or an interest therein, in Kansas, Oklahoma or North Texas, have only a small portion of their refining capacity connected with such lines. For example, Exhibit No. 6 showed the Texas Company as a shipper through the Great Lakes pipe line out of Oklahoma from its 20,000 barrel Tulsa refinery, while it has 412,200 barrels of refining capacity throughout the United States. This Exhibit also reveals on a national scale the problem now before the Commission, namely, as to whether the ownership and operation of a private pipe line shall be abolished.

414 Mr. UNDERWOOD: I don't agree that that question is before the Commission. There is nothing in the Interstate Commerce Act that permits the Commission to abolish any line.

Mr. GLASSER: I take it that the Court rules that that is improper?

Exam. KELLEY: That is an improper statement.

Mr. GLASSER: Let the record show it as such.

The WITNESS: The short bars representing National Co-operative, Champlin, Derby and Bell, in their respective instances, are typical of all of the smaller refiners who are reaching the markets served by their only refinery by means of a privately owned pipe line. The long bars represent the major companies' tremendous refining capacities over the entire nation which could drown the pipe lines of the smaller companies over the entire United States if such pipe lines were made common carriers, and thus foster, rather than prevent, monopoly in the market for refined products.

Mr. GLASSER: We now offer Exhibit No. 7 in evidence as a part of the testimony of this witness upon direct examination.

Exam. KELLEY: It will be marked for identification, as Exhibit No. 7.

(Respondent's Exhibit No. 7, Witness Leverton, marked for identification.)

415 The WITNESS: Exhibit Identification No. 8—not used.

(Respondent's Exhibit No. 8, not offered for identification.)

Q. (By Mr. GLASSER) Have you prepared an Exhibit showing the percentage of the total products which are sold by Champlin in its trade territory?

A. Yes, I have prepared an Exhibit which has been marked Exhibit No. 9, which shows the total gasoline consumed in the states of Wisconsin, Minnesota, Iowa, Kansas, Colorado, Nebraska, North and South Dakota, during the last six months of 1947. The chart is prepared so as to show the total gasoline consumed, and at the bottom of each bar is set forth the percentage thereof supplied by Champlin shown in color, as well as in figures. In the upper right hand corner, the chart shows the total gasoline consumed during the last six months of 1947 in the eight states, a total of 2,277,907,952 gallons. The chart shows that Champlin supplied only 1.98 percent of the total.

Mr. GLASSER: We now offer Exhibit No. 9 in evidence as a part of the testimony of this witness upon direct examination.

Exam. KELLEY: It may be marked for identification as Respondent's Exhibit No. 9.

(Respondent's Exhibit No. 9, Witness Leverton, marked for identification.)

Q. (By Mr. GLASSER) Does Exhibit No. 3, as previously introduced into evidence, throw any light upon the
416 number of outlets in the area indicated thereon, at which a jobber may secure petroleum products?

A. It does. The map discloses that there are seven pipe line terminals in the State of Kansas, located in Hutchinson, McPherson, Wichita, Topeka and Kansas City. In addition, there are 18 Kansas refineries at which products can be purchased. In Nebraska there is one terminal at Superior, three in Omaha, and one at Irvington. Products can also be obtained by the Nebraska jobbers at the Kansas and Wyoming refineries. In South Dakota, there are three terminals at Sioux Falls and one at Watertown. In North Dakota, there is a terminal at Fargo and one at Grand Forks. In Minnesota, there are terminals at Alexandria, Minneapolis, Morehead and Mankato. In Iowa, there is one terminal at Rock Rapids, three at Sioux City, two in Council Bluffs, two in Des Moines, one at Mason City and one at Coralville. These terminals are all pipe line terminals. There are two barge terminals at Kansas City and four at St. Louis. There are twenty-one terminals on the Mississippi River north from St. Louis and Wood River as far as Minneapolis. There are also three barge terminals at Superior, Wisconsin. The large number of pipe line terminals and barge terminals which I have just enumerated, show the numerous places to which a jobber may go for refined products. There is, of course, always rail and truck transportation also available to any of the sources of sup-
417 ply. The Exhibit demonstrates that every jobber in this trade territory has, under normal conditions, absolute freedom of choice in selecting his source, or sources of supply. He is able to purchase his products from the supplier or suppliers who make the best bid for his business and who will furnish him merchandise at the lease cost at the place from which he expects to market.

Q. Does Exhibit No. 4 reflect the relative capacity between Champlin's line and that of other product lines into the Champlin territory?

A. Looking at the area comprised of the southeast quarter of Nebraska and the southwest quarter of Iowa, this map shows common carrier capacity through the Great Lakes line of 30,000 barrels to Omaha, and 52,000 barrels to Des Moines, or a total capacity into this market of 82,000 barrels. These capacity figures which are reflected on this

map and which I am now referring to, represent the daily capacities of these lines. As against this common carrier capacity into this same market, there is a total private carrier capacity of 39,700 barrels reaching terminals at Omaha, Council Bluffs and Des Moines, consisting of Standard of Indiana with a capacity of 16,500 barrels, Socony with a capacity of 13,200 barrels and National Cooperative line with a capacity of 10,000. In addition, there is our daily capacity of 6,400 barrels to Superior. From these figures you can see that the total daily capacity of the Great Lakes
418 common carrier line into this immediate market is almost thirteen times that of our line, and that our line represents only about five per cent of the total products pipe line capacity into this market.

Then, as we move farther north into northern Iowa, southern Minnesota, northeastern Nebraska and southwestern South Dakota, you will note a common carrier capacity by Great Lakes, of 30,000 barrels to Sioux City and Sioux Falls, and a 27,000 barrel capacity to Mason City and Minneapolis, totaling 57,000 with a spur into Mankato in southern Minnesota with a capacity of 12,000. As against this common carrier capacity in serving this same market, you have a total private carrier capacity of 25,400 barrels into Sioux City and Sioux Falls, consisting of Standard of Indiana's line with 6,700 barrel capacity, Socony's line with 13,200 barrel capacity, and our line with 5,500 barrel capacity. From the above figures on the products pipe line capacity into Sioux City, Mason City and Sioux Falls, you can see that the Great Lakes capacity is ten times that of ours and that we have only about seven percent of the total capacity into this immediate market. As the Great Lakes line runs north from Sioux Falls into western Minnesota, their capacity is 23,000 barrels to Alexandria and 14,000 barrels from there to Grand Forks, North Dakota, an area not directly tapped by the private lines, but served out of their Sioux Falls and Rock Rapids terminals.

Q. Have you prepared Exhibits showing the
419 amount of time its products pipe line is in use by the Champlin Refining Company for the movement of its own products?

A. Yes. I have prepared statements showing the number of hours each day and the average number of hours per day each month that the line from Enid to Hutchinson, Kansas, was operated during 1946, 1947 and the first six months of

1948, consisting of five pages, which I have marked Exhibit No. 10.

Exam. KELLEY: It may be marked for identification as Respondent's Exhibit No. 10.

(Respondent's Exhibit No. 10, Witness Leverton, marked for identification.)

The WITNESS: I have prepared another similar Exhibit disclosing the same information as to operations between Hutchinson, Kansas and Superior, Nebraska, also consisting of five pages, which I have marked Exhibit 11.

Exam. KELLEY: That may be marked for identification as Respondent's Exhibit No. 11.

(Respondent's Exhibit No. 11, Witness Leverton, marked for identification.)

The WITNESS: These exhibits show that our products pipe line is in practically continuous operation moving products for the company.

Mr. GLASSER: We offer (separately) Exhibits 10 and 11 in evidence as a part of the testimony of this witness upon direct examination.

420 Mr. UNDERWOOD: I don't see that this would have any relevancy or material quality.

Exam. KELLEY: The exhibits will be received for what they purport to show and let the record show that they are in relation to the whole story here.

Q. (By Mr. GLASSER) Have you prepared a similar exhibit showing the quantity of products shipped by Champlin through its products pipe line?

A. Yes, I have prepared a statement headed, "Products Pipe Line Operation—In Barrels Last Six Months, 1947", which shows the quantity of each product put into the line in Enid, and the quantity of each product delivered by the pipe line to the respective terminals. The statement also shows the total deliveries from each terminal, showing the method of transportation from the terminal, as well as the states in which the destinations were located. Page 2 of this Exhibit is a summary of all Champlin products delivered into states served by products pipe line. I have marked that Exhibit No. 12.

Exam. KELLEY: It may be identified as Respondent's Exhibit No. 12.

(Respondent's Exhibit No. 12, Witness Leverton, marked for identification.)

Mr. GLASSER: We offer Exhibit 12 in evidence as a part of the testimony of this witness upon direct examination.

421 Exam. KELLEY: It will be received in evidence.

Q. (By Mr. GLASSER) What does this Exhibit show as to the amount of products moved by the Champlin products pipe line to each of the three Champlin terminals?

A. This Exhibit shows that during the last six months of 1947, the products pipe line delivered 23,455 barrels to Hutchinson, 329,911 barrels to Superior and 628,193 barrels to Rock Rapids.

Q. What does this show as to average deliveries?

A. Deliveries to Hutchinson averaged 127 barrels per day; to Superior 1,793 barrels and to Rock Rapids 3,414 barrels.

Q. What does this show as to the average amounts of petroleum products moving into the line during the period covered by the exhibit?

A. 5,334 barrels per day moved as far as Hutchinson, and an average of 5,207 barrels moved as far as Superior, and 3,414 was moved between Superior and Rock Rapids.

Q. How does this actual movement compare with the capacity of the line?

A. Present capacity of the Champlin line is 9,800 barrels from Enid to Hutchinson, 6,400 barrels from Hutchinson to Superior and 5,500 barrels from Superior to Rock Rapids.

Q. How does this actual movement compare with the capacity of the line?

A. Present capacity of the Champlin line is 9,800
422 barrels from Enid to Hutchinson, 6,400 barrels from Hutchinson to Superior and 5,500 barrels from Superior to Rock Rapids. You will note that the quantity which moved from Enid to Superior, namely, 5,207 barrels compares with a capacity of 6,400 for the segment of the line from Hutchinson to Superior. As shown by page 2 of Exhibit No. 12, our movement into Superior under normal conditions at least would be 1,091 barrels more than the actual daily average for the period covered by the exhibit for the reason as explained in the note on the second page of the exhibit.

Q. What, in general, does this exhibit show as to Champlin's use of its line?

A. It shows that under normal conditions our company uses the entire capacity of the important segment of the line from Hutchinson to Superior. This, of course, means

for the practical purposes, that our company used the entire capacity of the whole line.

Q. To what extent has your company used the line since the period covered by Exhibit No. 12?

A. During the first six months of 1948, we moved from 6,100 to 6,400 barrels (being the entire capacity of the line) per 24-hour period between Hutchinson and Superior, and the line was in operation approximately 90 percent of the time.

Q. Is that the normal operation of the line?

A. Yes.

423 Q. Mr. Leverton, will you please explain the levels of distribution at which petroleum products are distributed and the basis on which these products are priced at these various levels?

A. Basically, there are three levels of distribution at which petroleum products, especially gasoline, are usually distributed and priced.

At the consumer level, you have the retail price at which gasoline is sold at the service station. The retail price is fixed upon a margin which will return a profit and at the same time be competitive with the prices at other service stations with which such local operator competes. These service station operators usually buy at a "tank wagon" price which was identified with the early years because deliveries were then made to service stations in tank wagons. This identification has survived the use of trucks rather than wagons as the ordinary means of delivery to service stations.

These deliveries to service stations are usually made out of local bulk plants which are nothing more than local storage plants out of which deliveries are made to service stations, the farm trade and large commercial accounts, in a certain area, perhaps one county, perhaps several counties. These bulk plants may be operated by the same companies which refine the gasoline, these are known as company

424 bulk plants or they may be operated by what in the industry is commonly known as a jobber. The jobber buys his gasoline in tank car or truck transport lots from his supplier and resells it locally to service stations, the farm trade and to large commercial consumers. The price at which he buys is customarily identified as the tank car or in our case, the terminal price.

At the tank wagon level, the jobber competes with other jobbers and with company operated bulk plants. The price at which he buys must allow him a margin under this tank wagon price which will meet the expenses of this operation and in addition thereto provide him with a reasonable profit.

In addition to tank wagon sales to service stations, some petroleum products are sold by the jobber or company operated bulk plant directly to the consumer, usually the farm trade and the larger commercial accounts. These accounts have their own storage facilities and deliveries are made into this storage from tank trucks. The price at which these products are sold is also usually referred to as the tank wagon price.

Exam. KELLEY: We will recess for five minutes.

(Five minute recess taken.)

Q. (By Mr. GLASSER) How does Champlin distribute these products which it has in storage at its terminals at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa?

A. Over 99 per cent of such products are delivered
425 at the terminals to independent jobber customers.

These jobbers provide their own means of transportation from the terminals to their bulk depots. For example, we have a jobber, the Seger Oil Company, located at O'Neill, Nebraska. Products are delivered to him at Superior, Nebraska, and he arranges for their movement from Superior to O'Neill, almost always by transport truck.

Under normal conditions, some of these products are sold at the terminal on a spot basis without any previous contractual commitment and without any regularity of supply so far as we are concerned. Spot sales have been the decided exception within the past few years because of the shortage of petroleum products.

Q. On these sales to jobbers out of the terminal storage, do you have an established and uniform price for all jobbers who pick up their products at the same terminal?

A. We have an established terminal price for each of these products at each terminal. For example, on our regular grade of gasoline we have a terminal price today at Hutchinson, Kansas, of 11 cents per gallon, at Superior, Nebraska, of 12.25 cents per gallon, and at Rock Rapids, Iowa, of 12⅛ cents per gallon. These last mentioned ter-

minal prices are evidenced by the company's "Jobbers Price Lists", copies of which are identified as Exhibits 13 (Hutchinson), 14 (Superior) and 15 (Rock Rapids).

Mr. GLASSER: We offer exhibits 13, 14 and 15 in
426 evidence as a part of the testimony of this witness on direct examination.

Exam. KELLEY: They will be marked for identification as Respondent's Exhibits No. 13, No. 14, and No. 15.

(Respondent's Exhibits No. 13, No. 14, and No. 15, Witness Leverton, marked for identification.)

The WITNESS: Most of our jobber customers have their businesses at places other than at our terminals. Consequently we are faced with fixing what amounts to a destination price for each jobber as to each of these products which will permit him to compete with his local competition. Where necessary to be competitive, we have accomplished this by setting up for the location at which a jobber customer is engaged in business an "allowance to meet competition" off of the price at the terminal at which such individual jobber picks up his product. This allowance is the same on gasoline, kerosene, tractor fuel and fuel oil. Consequently, our price to each jobber, at the terminal is the applicable terminal price less the applicable allowance to meet competition, if any.

Q. (By Mr. GLASSER) Now, Mr. Leverton, what factors have influenced the fixing of these prices?

A. These prices are fixed entirely by the individual competitive conditions throughout the area. That is, they are based upon the general market price in each locality. Of course, we are a small competitive factor in the mar-
427 ket of Colorado, Kansas, Nebraska, Iowa, Minnesota, North and South Dakota, and Wisconsin. Our total gasoline sales in this general market approximate only 1.98 per cent of the total sales of gasoline in this market. As price is a most important factor in maintaining our competitive position, we cannot disregard competition in fixing our price. In fact, our competition fixes our price for us. This is true because we cannot sell at a higher price than the prevailing delivered cost to our jobber's competitor and, where our jobber is competing with company operated bulk plants, at a price which will not permit him to compete with this competition at the tank wagon level. This is true for two reasons. First, if we charge our jobbers more than his competitors pay, their lower price inevitably

reflects itself in a lower tank wagon price and in the price to the consumer, which means a loss of business to us unless we meet this lower price.

Secondly, if our jobber can buy products elsewhere for less than he can buy them from us, when his contract with us ends he will turn to the lower cost source or supply unless we have met it.

Consequently, we have to fix, and have fixed, our terminal prices and our allowances off of these prices solely on the basis of what will permit our jobbers to be locally competitive at their places of business and what will permit us to be competitive with other suppliers.

428 Q. You have stated that each of these prices were based upon the competitive market. Will you tell the Commission the basis of your prices at Hutchinson, Kansas?

A. At this time, I would like to refer to the map which has been identified as Exhibit No. 3, and which shows our major competition in the general area around each of our terminals. I also have a second map identified as Exhibit 16, which illustrates the net prices which we have had to establish at our terminals to permit our customers to pick up the products at the terminal but at the same time meet their immediate competition in the locality where they are engaged in business. Each heavy dot on this map indicates the location of a bulk plant operated by a Champlin jobber and in six instances by the Champlin company.

Mr. GLASSER: We offer Exhibit No. 16, in evidence as a part of the testimony of this witness on direct examination.

Exam. KELLEY: It will be marked for identification, as Respondent's Exhibit No. 16.

(Respondent's Exhibit No. 16, Witness Leverton, marked for identification.)

Q. (By Mr. GLASSER) Please proceed.

A. Now let us look at Hutchinson. For many years before our line to Hutchinson was completed, the Kansas market from a price standpoint was dominated by a group of refineries in Kansas. The following is a list of those refineries:

429 Location	Operated by	Daily Crude Capacity
Arkansas City	Kanotex Refining Co.	8,500
Augusta	Socony-Vacuum Oil Co.	23,750
Chanute	Chanute Refining Co.	1,000
Chanute	Missouri Farmers Assn.	1,650
Coffeyville	Cooperative Refinery Assn.	13,500
Coffeyville	Sinclair Refining Co.	11,000
El Dorado	El Dorado Refining Co.	8,000
El Dorado	Skelly Oil Company	25,000
McPherson	Bay Petroleum Company	5,000
McPherson	National Coop. Refg. Assn.	18,000
Neodesha	Standard Oil Co.—Indiana	7,700
Phillipsburg	Cooperative Refinery Assn.	4,000
Potwin	Vickers Petro. Co.	5,000
Shallow Water	Shallow Water Refg. Co.	2,500
Wichita	Bareco Oil Co.	6,500
Wichita	Derby Oil Company	8,000

The National Cooperative Refining at McPherson was owned and operated by Globe Refining Company when the Champlin line was constructed.

No company can compete in this market at a price that is appreciably higher than the current prices charged by these Kansas refineries. Over the years these Kansas refineries have adopted and published an f. o. b. refinery-tank car price on refined petroleum products. Ir-
430 respective of what may be our cost of moving products from our refinery to any point in Kansas and irrespective of what means of transportation we use, be it pipe line, rail or truck, the prices at which we can sell our products in the state of Kansas are controlled by the prices which are currently being charged by these Kansas refineries, and that is the basis on which we established our Hutchinson price at 11 cents per gallon. For example, on May 10, 1948, the date on which our price at Hutchinson of 11 cents per gallon was announced, the then current price being quoted f. o. b. these refineries was 10⅞ cents per gallon.

Our price at Hutchinson was competitive even though it was ⅛ cents per gallon more than the Kansas refinery price, because competitors with our jobber in Hutchinson had to pay the cost of moving to Hutchinson the product from the Kansas refinery at which he was buying.

However, we sell to a large number of other customers in Kansas. As the cost of moving products from our Hutchinson terminal and from the Kansas refineries to

other points in Kansas was substantially the same for our jobbers to be competitive, we had to sell them at the same price that their competitors could buy from the Kansas refineries, except for Hutchinson and Wichita.

This explains the net price of 10⅞ cents per gallon on regular gasoline which we quote to all Kansas jobbers, other than at Hutchinson and Wichita, to meet their local competition. This net price is reached by taking our Hutchinson price—eleven cents—and deducting the "allowance to meet competition" of ⅛ cents per gallon set up for these jobbers. Thus we are delivering to these customers at the same price being currently quoted f. o. b. the Kansas refineries. Wichita presents its own competitive situation. In the first place, there are two refineries located there, operated by Bareco and Derby.

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In the second place, Wichita presents a local metropolitan market which always intensifies the competitive situation. For us to be competitive at Wichita, we have to allow an additional ¼ cents per gallon off of our Hutchinson price. This results in a net price of 10⅝¢ cents per gallon at our Hutchinson terminal on regular grade gasoline destined for Wichita.

Now when we get out to Colorado points, our Colorado jobbers are faced not only with competition buying from the Kansas refineries but also by competition buying from the Oklahoma refineries as tank car freight rates are the same from the refinery points in Kansas and Oklahoma. To be competitive the Kansas refineries which I have just mentioned quote Colorado customers ⅜ cents off of their Kansas price. To enable our Colorado jobbers who are picking up their product at Hutchinson to be competitive, it was necessary that we decrease our net Hutchinson price for these destinations by ⅜ cents per gallon which we did so that the net price to these jobbers was the same as that being currently quoted by the Oklahoma and Kansas refineries for Colorado points. Also the Denver refineries operated by Continental Oil Company and Bay Petroleum Company offer additional competition in this Colorado market.

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Using regular grade gasoline as an example, it is on this basis that we fixed a terminal price of 11 cents per gallon at Hutchinson; a net price of 10⅝ cents per gallon for this product for Wichita; a net price of 10⅞ cents per gallon for the other points in Kansas; and a net price for this product of 10⅜ cents per gallon for Colorado points. These different net prices are illustrated by the

difference in the legend marking on the red shading in Exhibit 16.

Q. For how many destinations do you sell regular gasoline at the Hutchinson terminal at these three different prices?

A. Exhibit 13 discloses the following: For Hutchinson we sell at the straight Hutchinson price of 11 cents; for 60 other points in Kansas we sell at 10⅞ cents; for Wichita, Kansas and 9 Colorado points we sell at 10⅝ cents.

Q. What factors have influenced your prices at the Superior, Nebraska, terminal?

A. These prices are also fixed by competition in the general marketing area. At this time, I would like
433 to repeat that the competitive price situation in this general area, together with the loss of our market, was the impelling reason that caused us to construct this line. Up to the time we built our line in 1935, deliveries of our products into this market were made out of our Enid refinery by tank car. These same Kansas refineries were selling f. o. b. their refineries to Nebraska and Iowa jobbers who were moving their product to their local markets by transport truck at a substantially lower cost than that involved in the movement of our products from Enid by tank car. The construction of the Great Lakes pipe line into this market in 1932, was an attempt by the oil companies which owned interests in Great Lakes to compete with these truck deliveries out of the Kansas refineries. The construction of our line and the movement of products through the line was our means of meeting this competitive situation. Today, just as back in 1935, our prices to the Nebraska and Iowa market must be kept at a price level which will be competitive with transport truck deliveries out of the Kansas refineries.

Further competition in eastern Nebraska is constantly controlled not only by these truck movements but also by the movement of products by other pipe lines which have been built to this general market. At no place in the country is there such a concentration of product lines as there is into the eastern Nebraska and western Iowa
434 market. Following the construction of the Great Lakes Line and our line, Globe (now National Cooperative Refining Association,) Socony-Vacuum and Standard of Indiana individually built product lines into this area. These lines are plotted on the map which has been identified as Exhibit No. 3.

The Great Lakes line originates in northeast Oklahoma. In this area it taps not only a group of refineries but is also connected with the Sunray-Wilcox line moving up from the south. At Kansas City it branches, with one branch going through Iowa, with terminals at Des Moines and Mason City, Iowa, and at a joint terminal for St. Paul and Minneapolis, Minnesota. The other branch, constructed since the end of the war, supplanted a spur from the Des Moines line to Council Bluffs, Iowa, and follows the Missouri River with terminals at Omaha, Nebraska, Sioux City, Sioux Falls and Watertown, South Dakota, Alexandria, Minnesota and Fargo and Grand Forks, North Dakota.

The Socony-Vacuum line originates at its refinery in Augusta, Kansas, with terminals at Topeka and Kansas City, Kansas, going north with terminals at Omaha, Nebraska, Sioux City, Iowa, and Sioux Falls, South Dakota.

The National Cooperative Refinery Association line originates at its McPherson refinery and has a terminal at Council Bluffs, Iowa, and Irvington, Nebraska, situated a few miles northwest of Omaha.

The Standard of Indiana line originates at its
435 Sugar Creek, Missouri refinery, just outside of Kansas City, with one branch going north with a terminal at Des Moines, Iowa, and with the other branch following the Missouri River with a terminal at Council Bluffs, Iowa, and Sioux City, Iowa, and a terminal at Sioux Falls, South Dakota.

Although our line is generally westerly of these other lines, they serve essentially and the same trade territory. Almost all points which are served by truck or tank car out of our terminals are similarly served out of some if not all of these other lines. However, in southwestern Nebraska and northwestern Kansas we can compete with Kansas, Colorado and Wyoming refineries because of our Superior terminal. Those companies that must supply this territory from pipe line terminals in the vicinity of Omaha must meet these local conditions.

It is these competitive factors which, after careful study, resulted in our fixing our terminal price at the Superior, Nebraska, terminal at 12¼ cents per gallon on regular gasoline.

I wish to refer at this time to the allowance tables for the Superior terminal (Exhibit 14) on the basis of which our net prices to Nebraska jobbers are computed. You

will note that the Nebraska net prices are not as uniform as those which prevail in the state of Kansas.

436 As I have heretofore said, this general uniformity of net prices in Kansas is due to the fact that we have to quote f. o. b. Hutchinson prices to points outside of Hutchinson which will be competitive with the established and posted f. o. b. Kansas refinery price. As transportation costs are substantially the same from Hutchinson and the situs of these Kansas refineries to other points in Kansas, the net price is generally the same for all Kansas points and results in the net Hutchinson price which is the equivalent of the posted f. o. b. Kansas refinery price.

Consequently, there is not the variation in these prices that is necessary in Nebraska. Competition at the various points in Nebraska, however, is dominated by product movements by: (1) truck transport from Kansas refineries, (2) pipe line into eastern Nebraska and western Iowa points and the movement from pipe line terminals to points of destination in Nebraska by either transport truck or tank car, and (3) railroad tank car and transport truck from refineries located at Denver, Colorado and in Wyoming, and to a very limited extent by a small refinery in western Nebraska at Scottsbluff. The operators and capacities of these Colorado and Wyoming refineries are:

Location	*Operated by*	*Daily Crude Capacity*
Casper, Wyoming	Socony-Vacuum Oil Co.	4,275
Casper, Wyoming	Standard Oil Co.—Ind.	13,000
437 Casper, Wyoming	Texas Company	12,000
Cheyenne, Wyoming	Frontier Refg. Co.	8,600
Glenrock, Wyoming	Continental Oil Co.	3,400
Newcastle, Wyoming	Carter Oil Co.	1,700
Newcastle, Wyoming	Gray Refinery, Inc.	2,500
Denver, Colorado	Bay Petroleum Co.	5,000
Denver, Colorado	Continental Oil Co.	3,200
Scottsbluff, Nebraska	Cooperative Refinery Assn.	1,800

With these various competitive factors in the picture, of necessity there is a lack of uniformity in the net Superior, Nebraska, prices. These different net Superior prices have been plotted on Exhibit 16.

I again wish to point out that our customers pick up the products at the terminal and move it by their own

transportation from the terminal to their places of business in the state and these net prices have been established after careful study to permit our customers to compete in their places of business with their local competition.

Exhibit 16 further shows how this works out in Nebraska. Immediately north of Superior is a small 1/8 cent zone. Immediately to the east is a small 1/4 cent zone, but sales to jobbers for this zone were discontinued between the preparation of the Exhibit and this time. Further to the north is a 3/8 cents zone. Through the central part
438 of the state is a 1/2 cent zone bordered on the northeast and west by two 5/8 cent zones. As you then move closer to the pipe line terminals at Omaha, Council Bluffs and Sioux City, with the increased cost of transportation to our jobbers and the increasing proximity of these other pipe line terminals, you encounter a series of zones at 3/4, 7/8, .01 and 1 1/8 cents. Also as you move into the western part of the state, with an increased cost of transportation to our jobbers and an increasing proximity to the Denver and Wyoming refineries, you encounter a large zone at .01 and small zones at 7/8 cents and at 1 1/8 cents.

Q. Do you know for how many different points in Nebraska you sell at each of these prices?

A. Exhibit 14 discloses the following: Superior at the straight Superior price; 2 points at 1/8 cents off; 0 points at 1/4 cent off; 9 points at 3/8 cent off; 38 points at 1/2 cent off; 20 points at 5/8 cent off; 7 points at 3/4 cent off; 4 points at 7/8 cent off; 14 points at .01 off; 14 points at 1 1/8 cents off.

Q. Now, Mr. Leverton, you have been pointing out how competitive prices fix your prices. Are these competitive prices publicly available?

A. Tank wagon prices, yes. Take Standard of Indiana, for example, they operate bulk plants throughout this area. At each of these local bulk plants they post
439 the tank wagon prices at which they are making sales at these bulk plants. All of the other companies operating bulk plants do the same thing. These postings are publicly available to anyone who wants to look at them. Everyone in the business in the territory knows what they are; the retail service station operators, the jobbers and the refiners. In fixing our price to our jobbers we know that we have to give them a margin which will permit them to compete with these tank wagon prices. Terminal prices to competitive jobbers are not publicly

says, "I cannot pay 12⅛ cents." Our salesmen who travel that territory, of course, are familiar with the price conditions. They know that he can buy it for less than that somewhere else and he knows he has to sell in competition with gasoline that has been bought.

Exam. KELLEY: Will you just tell us how you get your 12⅛ cents price? That is what we are interested in.

Mr. GLASSER: I want the record to show that the determination of the price is wholly immaterial, irrevelant and incompetent, and not a proper matter for inquiry at this hearing.

Exam. KELLEY: I insist that it is. I will have to ask the witness for an answer. He says he knows.

Mr. UNDERWOOD: He is qualified as an expert and should know how the prices are fixed and how they changed from a differential.

Exam. KELLEY: I have already ruled. Go ahead.

The WITNESS: The 12⅛ cents price at Rock Rapids was determined or ascertained by the prices at which
468 refined products, manufactured by other people, could be bought by jobbers in the vicinity, of Rock Rapids. For instance, they could go to three pipe line terminals at Sioux City, three pipe line terminals at Sioux Falls, and buy the products of several other refineries.

However, the sales organization, by constant contact and by the information that the jobbers gave them found that we could get 12⅛ cents a gallon for our gasoline. That was how the 12⅛ cents was determined.

Exam. KELLEY: What goes into that 12⅛ cents? You have the Chicago Journal of Commerce price for all gasoline sold in that area, don't you? You start with that as your base, don't you?

The WITNESS: No, sir, not the 12⅛ cents.

Exam. KELLEY: What ever you use. What do you use?

The WITNESS: We used the price out of those other terminals, those six pipe line terminals, within sixty miles of Rock Rapids.

Q. (By Mr. UNDERWOOD) What becomes of your group three rates?

A. They don't enter into the making up of the 12⅛ cents rate.

Q. Now, in your sales contracts here, you apparently fix it on the basis of the Chicago Chamber of Commerce quotations?

A. The increases and decreases.

469 Q. Isn't your first fixing also based on that, the price that is made by the Journal of Commerce? Don't you take that into consideration in considering the price?

A. No, sir.

Q. Whether you up your price or lower it?

A. The increases and decreases go up.

Q. According to the Chicago Journal of Commerce?

A. Yes.

Q. Then you are dependent some on the prices reflected by that publication, aren't you?

A. Yes, sir. We have to have some index as to when prices will go up and when they will go down and that is the measure that was adopted.

Q. Yes, and you do that under the differential system don't you?

A. The Enid prices did that.

Q. Therefore, so far as the aspect is concerned, there is no difference between your new method of pricing than there was in the differential.

A. You mean so far as whether the increase or decrease on the contract?

Q. And that the Chamber of Commerce quotations enter into the question of the price?

A. Enter into the question of increases and decreases after the price has been agreed to between us and the customer.

470 Q. Do you mean to tell me that you don't take into consideration, the price quotations of the publications like the Journal of Commerce, or—was it the other one? The Oil—

A. Oilgram.

Q. Yes, that you don't take those into consideration in fixing the prices for your products?

A. The 12⅛ cents that I just described, as fixed at Rock Rapids, is the way it was determined.

Q. You determine your price under the old differential method, another method but arrived at practically the same result, didn't you? You fixed a certain price and then you put in the straight rate to the place of residence or doing business of your customer. If that was not one of your terminal outlets, you gave them a differential for the difference between the haul from the outlet points, say, Rock Rapids, to the place of consumption. Isn't that correct?

A. May I say it this way: That under the old differential system, the Enid price or the base price was the group three price, as published in the Chicago Journal of Commerce.

Q. Yes.

A. To which a differential was added.

Q. Isn't that practically the same way, except that you call it something else? You have the same price situation. You don't use Enid as a basis when you don't add anything?

A. We don't use Enid as a base when we don't add anything.

471 Q. Don't you take into consideration in your price, the cost of the transportation through the pipe line?

A. No, sir.

Q. You mean you haul it free?

A. No, sir.

Q. That does not enter?

A. We don't take it into consideration.

Q. You don't take it into consideration?

A. No.

Q. You do it free of charge?

A. We didn't take it into consideration, Mr. Underwood.

Q. You want the Commission to understand that in fixing your prices, you don't take into consideration the cost of the transportation from Enid to either Hutchinson or Superior or Rock Rapids?

A. May I answer that as to Hutchinson, since you have mentioned it?

Q. Answer all three. Let's look at all three.

A. To points in Colorado, the price is identically the same as the Kansas refineries' charge. Kansas refinery charges the same for gasoline going into Colorado as an Oklahoma refinery charges, which is less money than they charge for Kansas destinations. Therefore, if a Colorado jobber wants to buy gasoline from Hutchinson, he can buy it at the same price that he can buy it at an Oklahoma refinery.

472 Mr. Underwood: I submit, Mr. Examiner, that does not constitute an answer to my question at all.

Exam. Kelley: Maybe he can continue and give you a little further answer. You have charge of all of the accounts of the Champlin Refining Company, do you?

The Witness: Yes, sir.

Exam. Kelley: Are the accounts of the pipe line company kept separate, is the pipe line department kept separate so that you know at all times what it costs you to operate the pipe line?

The Witness: Yes, sir.

Exam. Kelley: Having that information before you, what use is made, other than fixing prices?

The Witness: Mr. Kelley, I don't think that that is ever considered.

Exam. KELLEY: Since when did you stop considering it? That is the way you used to make a price?

The WITNESS: I never knew of taking the cost of operation into consideration.

Exam. KELLEY: The cost of transportation over the pipe line, let's put it that way. Is there any way that you determine the cost of transportation from your refinery to any of the terminals?

The WITNESS: Our account covers the cost of operating the pipe line system, plus the terminal. There is no
473 segregation between operation of the line and operating of the terminal. There is no segregation between operation of the line, and operating of the terminals and making the deliveries of the products at the terminals, if that is what you mean.

Exam. KELLEY: So your policy then is one of meeting competition, regardless of what it costs you to meet it?

The WITNESS: We meet competition. Of course, if it costs too much, we probably would not meet it.

Exam. KELLEY: How do you know? If you don't take into consideration the cost of transporting the product. how are you going to know when it costs you too much?

The WITNESS: We might not know. We can't afford to sell gasoline to go into a certain territory, maybe in Minnesota, or Wisconsin, that we would have to make allowance for a cent a gallon, as long as we can sell it over here and make an allowance of only a half a cent.

Exam. KELLEY: That is choosing a distribution area and not whether you can afford to do it or not as a matter of products and transportation.

The WITNESS: As to whether we can afford to do it, I believe, enters into the cost of the manufacturer and cost of operating the pipe line and the cost of loading it into trucks. When those total costs get where they exceed the
474 sale price, then we would be at a point here we could not continue to operate too long.

Exam. KELLEY: Do you know how much it costs for each of those steps, in the process of getting a distribution, of producing and transporting through the terminals? Your cost stops then after the product goes to the customer?

The WITNESS: Yes, after it leaves the terminal, after it leaves terminal storage, our cost stops.

Exam. KELLEY: You only have to consider competitive prices from there on and your ability to meet those prices is based on your cost to get to the terminal?

The WITNESS: Our total cost to the terminal?

Exam. KELLEY: That is right. You also know what that is through your accounts, don't you?

The WITNESS: Yes, sir, approximately.

Mr. UNDERWOOD: Then your answer to the question would be that you do take into consideration the transportation cost of the pipe line from Enid in your sales, don't you?

The WITNESS: As to whether we can meet competition, yes, sir.

Q. (By Mr. UNDERWOOD) I don't care why you do it, I want to know if you do it. This Oil Company's Exhibit No. 17, Hensley Oil Company at Burton, Kansas, is he one of your regular contract purchasers?

A. Yes, sir.

Q. So he was with you before the new price ar-
475 rangement is affected, as well as after?

A. Yes.

Q. This contract is dated May 10. Is that the date this thing went into effect?

A. Yes.

Q. Pardon my stupidity if I can't understand all of these things that are here. I wish you would tell me, if you can—here is your Hutchinson terminal and you have Burton, which is Hensley's place.

Mr. GLASSER: I think the record should show the exhibit. The record he is referring to.

Mr. UNDERWOOD: I am calling your attention to the Exhibit No. 20, Mr. Leverton, in connection with Exhibit No. 17, which is the contract of Hensley Oil Company.

Q. (By Mr. UNDERWOOD) You have the prices in the contract and then you have those prices, less an allowance to Burton of point .00125 per gallon cents. Are you able to tell me what difference there was in the price under this contract than there was under the old one, before these new ones?

A. On the date of the contract, May 10, 1948, this first item of 11 cents for Champlin applies to gasoline, on which the pipe line shows A—no, the contract provides for an allowance of ⅛ cent would make the price 10⅞ cents and on May 9, under the old method of price differential, the
price in Enid was 10⅝. The differential would pro-
476 duce 10⅞ cents, the same price.

Q. That would be the same with respect to your Exhibit No. 18, at O'Neill, Nebraska?

A. I don't know about that one. Under the Seger Oil Company contract, Exhibit No. 18, the May 10th price for the Champlin Presto gasoline was 12¼ cents, less an al-

lowance when destined to O'Neill of ¾ cents, which makes the net price 11½ cents. Under the May 9, differentials, the price of the same product at Enid was 10.625 cents and the differential was .00924 cent which would make a price of 11.549 cents.

Q. Exhibit 19, the contract of May 10 between the Gregory Independent Oil Company of Gregory, South Dakota, and Champlin Refinery. What can you tell me about that? A. The price provided by Exhibit No. 19 to the Gregory Oil Company for shipment to Gregory, South Dakota is the Rock Rapids terminal price of 12⅛ cents, less an allowance of ⅛ cents or a net price of 12 cents a gallon. Under the May 9, differentials, the price would have been 10.625 cents plus a differential of over 1.15 cents, making his price 11.775 cents.

Exam. KELLEY: While you have that Exhibit No. 20 before you, Mr. Leverton, will you explain why, on this tabulation of prices comparing May 9, 1948 with November 12, 1941 from Hutchinson and Superior terminals to
477 places exactly the same, you have considerable variation in your prices between the two years from Rock Rapids?

The WITNESS: I think that comes about primarily by the completion of the other pipe lines into the Rock Rapids area. In January of 1946, there was a very substantial reduction in all the differentials out of Rock Rapids.

Exam. KELLEY: Just what relation do these May 9, prices bear to the 1946 reductions? Are they practically the same?

The WITNESS: Yes, sir. May 9 is substantially the 1946 prices with a few exceptions.

Exam. KELLEY: So the competitors of Champlin still uses the same basis of differentials in making their prices, but your meet them just the same from your terminals regardless of what they are, within your ability to leave the stuff at the terminal at the cost which will show you some profit?

The WITNESS: Mr. Kelley, I think I can say yes to that question, with the exception as to what our competitors use in making up their price.

Exam. KELLEY: Let's say in 1946 you were both using the same method and you meet their prices then. Those prices now are the same, so wouldn't it follow on that they are using still the same method of pricing?

The WITNESS: If they used those prices, yes, sir.

Exam. KELLEY: You say that these are the same prices that you establish in 1946, and you have been carrying them on?

478 The WITNESS: Yes, sir, Mr. Kelley, I would rather not testify that I know what the competitors used, because I don't.

Exam. KELLEY: You have testified that what they use is the basis of your pricing, because you have to know what they are doing and at what prices they sell before you can attempt to meet those prices?

The WITNESS: As to the answers they get, yes, sir.

Exam. KELLEY: Your sales price keeps you advised as to what they are doing?

The WITNESS: That is correct, their price, we try to meet.

Exam. KELLEY: I think you have testified enough on that.

Q. (By Mr. UNDERWOOD) On page 57 of your testimony your answer to the question of whether you show on any of your contracts a charge for transportation by pipe line and you said no. On the last question on that sheet, in answer to the question: "Or on any of your own company records?" You said, "No. What we do is to set a destination price, which will be competitive. There is no charge to the customer for transportation." Do you want the Commission to understand that you don't charge anything, even though it is concealed in your price at the terminal? There is a charge for transportation in there, isn't there, that the customer pays, just the same as he did when

479 you charged him the freight?

A. No, I wouldn't say that—

Q. Your answer may be technically correct, that you don't charge him a specific amount in your bill for transportation, but what I mean, do you want the Commission to understand that you don't make any charge in your price, you don't take that into consideration, the cost of the transportation from Enid to the point of delivery?

A. Mr. Underwood, it is admitted, of course, that the price at which we sell must be sufficient to meet all costs.

Q. I don't say that you should not charge for it. I want to know, don't you really get something out of the transportation service?

A. I don't mean to say that the price isn't enough to include it.

Q. But you don't call it that, you don't separate it?

A. That is right.

Q. In your costs, but it is in there. It is concealed but it is a factor and a proper factor for your price.

When you were speaking about your competitive situation, there is one point at which you stand pretty well, isn't it, so far as competition is concerned? You can make

a better price than some, at least, of your competitors? Isn't that at Hutchinson that that is true?

A. Where?

480 Q. Hutchinson, or is it Superior?

A. Oh yes, we can make—

Q. You can make a better price?

A. We can make a better price at two places than any of our competitors.

Q. Where?

A. Enid, where our refinery is and Superior, where we don't have another pipe line right in the vicinity.

Q. So that you can afford to cut your price at other places, because you do better at these other two? I mean, I am not criticizing that, but that is the way business is handled, isn't it? If you can make a little more money at one spot, in order to compete somewhere else, you have to meet a lower price than you have over there, then that is the way you handle business, isn't it? That is why your situation has, over the years, since you built the pipe line improved over what it was prior to the use of the pipe line and in the days of the doldrum?

Mr. GLASSER: The former question carries in it a good many implications, some argument, and it is difficult to answer because of some angles.

Exam. KELLEY: Let the witness say if he can answer. If he can't, we will have it reframed or rephrased.

The WITNESS: Will you read it please?

(Pending question read.)

481 Q. (By Mr. UNDERWOOD) I will leave it on the basis that you have two points, you have testified to that, haven't you, that you have two points where you have the competitive advantage.

A. Yes, sir.

Q. All right.

Mr. UNDERWOOD: I think that is all I have.

Exam. KELLEY: Do you have some further questions, Mr. Glasser?

Mr. GLASSER: We would like to have a few minutes to consider and to confer as to whether we will or not.

Exam. KELLEY: We will adjourn until two o'clock.

(Whereupon, at 12:30 o'clock p. m., the hearing was adjourned until two o'clock of the same day.)

482 2:00 P. M.

AFTERNOON SESSION

Exam. KELLEY: We will come to order.

You may proceed, Mr. Glasser.

Mr. GLASSER: Let the record show that the Champlin Company at this time closes its case and submits the matter to the Examiner on the record that has been made, except for one thing. We neglected to have the exhibits all accepted in evidence.

Exam. KELLEY: Do you offer these exhibits in evidence?

Mr. GLASSER: Yes, I first offer Respondent's Exhibits 1 through 7 inclusive, and Numbers 9 to 21 inclusive. Number 8 was not used. I also offer Respondent's Exhibit A.

Exam. KELLEY: All of the exhibits that have been entered here both by the Commission and the Respondent are received in evidence.

(Commission's Exhibits No. 1 through 7, inclusive received in evidence. Also Respondent's Exhibits No. A, 1, 2, 3, 3A, 3B, 4 through 7, inclusive, No. 9 through No. 21, inclusive received in evidence.)

Exam. KELLEY: There will be no proposed report.

I assume you want to brief the case and the Respondent's brief will be due October 1, and the brief for the Commission on October 15.

If there is nothing further, we will consider this hearing closed.

(Whereupon, at 2:15, the hearing in the above en-
483 titled matter was closed.)

484 INTERSTATE COMMERCE COMMISSION

No. 29912[1]

CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS

Submitted May 10, 1949 Decided June 13, 1949

CHAMPLIN REFINING COMPANY found to be a statutory common carrier of petroleum products by pipe line in interstate commerce, and required to comply with the provisions of Sections 6 and 20 of the Interstate Commerce Act.

HARRY O. GLASSER, NATHAN SCARRITT, E. S. CHAMPLIN, and SAMUEL H. HORNE for the respondent.

HARRY L. UNDERWOOD for the Interstate Commerce Commission.

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[1] This report also embraces No. 29912 (Sub-No. 1), Champlin Refining Company Tariffs.

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by the respondent, and we have heard oral argument. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been given consideration and found not justified.

The title proceeding was instituted by order entered on February 2, 1948, by division 1, upon its own motion, because the Champlin Refining Company, herein called Champlin or the respondent, had failed to comply with the requirements of section 20 of the Interstate Commerce Act,[2] and our orders and regulations made pursuant thereto, with respect to accounting and the making and filing of annual and other reports.

(Docket No. 29912—Sheet 2)

485 No. 29912 (Sub-No. 1) was instituted by order entered on March 3, 1948, by division 2, upon its own motion, because the respondent had failed to comply with the requirements of section 6 of the act,[2] and our orders and regulations made pursuant thereto, with respect to the publishing, posting, and filing of tariffs. The proceedings together constitute an investigation and inquiry into the acts, practices, and conduct of the respondent in respect of such non-compliance with the sections of the act named in the orders, with a view to making such orders as may be proper in the premises. They were heard together on a common record and, after the hearing, were consolidated for our final determination.

Copies of our orders and regulations made pursuant to the requirements of sections 6 and 20 of the act, and copies of correspondence with the respondent in relation thereto, were made a part of the record. By agreement of counsel, certain parts of the record made in *Champlin Refining Co., Valuation of Pipe Line*, 49 Val. Rep. 463 and 542 (the latter, a report on reargument), were incorporated into this record by reference.

In the valuation proceeding, we found Champlin to be a common carrier of refined petroleum products by pipe line and to be subject to the provisions of the act. An order was entered directing Champlin to comply with the provisions of the valuation orders previously served upon it. Champlin's bill to set aside that order was dismissed by the District Court of the United States for the Western District

[2] Pertinent portions of sections 6 and 20 are shown in the appendix.

of Oklahoma, 59 F. Supp. 978. On appeal, that action
486 was affirmed by the Supreme Court. *Champlin Refining Co. v. United States,* 329 U. S. 29.

Aside from the total investment in the pipe line and appurtenant facilities, now said to be $3,230,050.26, certain factual statements embodied in the reports in the valuation proceeding are admitted by respondent to be true for the purpose of the instant proceeding. The portions of those statements essential to an understanding of the issues before us follow:

(Docket No. 29912—Sheet 3)

The Champlin is a corporation of the State of New Mexico, authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile gasoline pipe-line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks, and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid.

* * *

Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line: it has

never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or
487 with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line.

The principal change in the practices of the respondent in recent years is in the method of pricing the products which are transported through its pipe line. In the report on reargument in the valuation proceeding the method then used was described as follows:

(Docket No. 29912—Sheet 4)

In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date-of-shipment sale, the other, or contract sale, is based on yearly contracts with its customers. The spot, or F. O. B. price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7 A. M. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The delivered price includes, in addition to the spot of F. O. B. charges at the Enid refinery, a charge called a differential which is adjusted so that the through charge to the final transportation distination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipeline terminal.

The differential method of pricing was abandoned on May 10, 1948. On and since that date the terminal prices have

been posted at each terminal, and competitive market conditions are met by allowances under these terminal prices where required. These allowances range form ⅛ cent to ½ cent per gallon and are intended to place respondent's products on the market at the general market price in each locality served by the pipe line. The change-over on May 10, 1948, resulted in net increases or decreases of from ⅛ cent to ½ cent per gallon at more than 70 percent of the destinations served by respondent out of its Superior and Rock Rapids terminals. A change of ⅛ cent per gallon or more is recognized in the trade as substantial. No separate charge as such is now made for transportation, either in the invoices or in any contract for the sale of its products. It is still true, however, that the terminal price as posted takes into account the total costs of operating respondent's facilities, including the pipe line, and since the prices at each terminal must be competitive, now as prior to May 10, 1948, the net price result must necessarily approximate what it would be under the differential method, for as stated in respondent's

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(Docket No. 29912—Sheet 5)

brief "respondent at its terminals must meet the prices established by the sales of its competitors constituting over 98 percent of the total market."

Champlin argues that the holding of the Supreme Court in *Champlin Refining Co. v. United States, supra*, that the operation of respondent's line was transportation within the meaning of the act, was based upon the use by Champlin of a differential method of basing prices, and that having now abandoned that method and installed the present method of terminal pricing, it has thereby changed the character of its operations. The language of the Court relied upon in this respect was used to point out a distinction between the operations of respondent and those of the Uncle Sam Oil Company, considered by the Court, among others, in *The Pipe Line Cases*, 234 U. S. 548. The language used is as follows, page 34:

> Appellant states that as to some deliveries "rail rates were used merely as a basis for calculating a delivered price, not as a charge for transportation." Even so, and even though departures from the calculated differential are substantial and frequent, we think this practice points up a significant distinction from the Uncle Sam case.

We hold that Champlin's operation is transportation within the meaning of the Act and that the statute supports the Commission's order to furnish information.

As above shown, the change in the pricing method was a change in name more than in substance, the resulting terminal price, now as under the differential method,
489 generally being the price made necessary by competition and, as such, including the transportation cost or as much of it as was or is permissible under the prevailing competitive conditions. There is no reason to believe that the Court would have reached a different conclusion had approximately the same pricing results been reached by a method other than the differential basis then in use.

(Docket No. 29912—Sheet 6)

As in the valuation proceeding, respondent contends, basically, that it is not a common carrier and that its pipeline operation is not transportation within the meaning of the act. An understanding of the arguments advanced under this contention requires a discussion of certain additional facts bearing upon respondent's operations. Champlin's marketing area, generally speaking, embraces the States of Kansas, Iowa, Minnesota, Nebraska, Colorado, and South Dakota. For all practical purposes, the entire capacity of the pipe line is used in transporting the products of Champlin's refinery for distribution in this area. Only about 1.98 percent of the total gasoline consumed in the area is moved through the pipe line and sold from respondent's terminal storage facilities. The capacity of the pipe line, 9,800 barrels a day, represents only 5 percent of the total products pipe-line capacity served by its Superior terminal and only 7 percent of the total products pipe-line capacity served at markets adjacent to the Rock Rapids terminal. The total capacity of the common-carrier lines into the Nebraska market is about 13 times that of the Champlin line and about 10 times that of the latter into the Iowa market. The common carrier pipe-line capacity available to refineries in Oklahoma and Kansas aggregates 172,800 barrels a day, and respondent's pipe line is the smallest of any common-carrier or private pipe line operating
490 in this territory. Apparently, common carrier pipeline transportation is available to any small refiner in this area desiring such transportation.

Champlin's daily refining capacity of 18,000 barrels is small compared with the capacity of its large competitors in the same area. There are 86 wholesale outlets, including refineries, pipe-line terminals, and barge terminals, in this marketing area which are competing for the business of practically every prospective customer, and in addition, any jobber

(Docket No. 29912-7)

in the area may purchase his products from the 60 or more refineries in Oklahoma, Kansas, Arkansas, Illinois, Indiana, Texas, Wyoming, and Montana which deliver petroleum products into the territory by truck and rail.

The foregoing facts are cited by respondent to show that its pipe line is not clothed with a public interest and, in fact, is not needed for public transportation. It points out that in both *The Pipe Line Cases, supra,* and *Valvoline Oil Co. v. United States,* 308 U. S. 141, the pipe-line transportation therein concerned, excepting that of the Uncle Sam Oil Company in the first proceeding, was held to be transportation within the meaning of act because the pipe-line companies were carrying for others "all oil offered," as in the first proceeding, and a "public interest" was found "in the sole means of transporting this commodity from thousands of wells for thousand of producers," as in the second proceeding. In contrast, respondent emphasizes that it refines its own oil, moves only its own products through its own pipe line, stores its own products in its own storage facilities, where some of them are further processed, and subsequently markets its products from its storage tanks in the ordinary course of business.

Champlin insists that upon the facts presented its status must be held to be similar to that of the Uncle Sam company above referred to. With respect to the
491 operation of that company, the Court said in *The Pipe Line Cases, supra,* page 562, that it was "simply drawing oil from its own wells across a State line to its own refinery for its own use." The Court considered that this was not transportation within the meaning of the act. The situation before us differs. Champlin's pipe line is not used for drawing oil to its own refinery. It is used to transport refined products from the refinery to inter-state points for sale.

(Docket No. 29912—Sheet 8.)

Before proceeding further, it is well to call specific attention to the provisions of the act with which we are dealing. Except for minor revisions in language, these provisions as they affect pipe-line companies are the same today as they were at the time of *The Pipe Line Cases, supra,* 35 years ago. Section 1 of the act reads, in part, as follows:

> (1) That the provisions of this part [Part 1] shall apply to common carriers engaged in—
>
> * * *
>
> (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * * from one State * * * to any other State * * *.
>
> (3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; * * *

In *The Pipe Line Cases, supra,* pages 560-561, the Court said:

> The control of Congress over commerce among the States cannot be made the means of exercising powers not entrusted to it by the Constitution, but it may require those who are common carriers in substance to become so in form. So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.

More than 20 years elapsed following that decision before Champlin's pipe line was constructed. In interpreting the term "common carrier" as used in section 1 of the act, the Court said in *Champlin Refining Co. v. United States, supra,* pages 34-35:

492

> Admittedly Champlin is not a common carrier in the sense of the common law carrier for hire. However, the Act does not stop at this but goes on to say that its use of the term "common carrier" is to include all pipeline companies—a meaningless addition if it thereby included only what the term without more always had included. * * * The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier.

Respondent argues that if it is required to comply with the provisions of Section 6 of the act with respect to the fil-

ing of tariffs, it will be assuming the duties of a common carrier and thus be committing itself to open its line to the use of the public, so that its competitors could establish physical

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connections with it and largely absorb its line for their own use, thereby depriving the refinery served by the pipe line "of the only available market which it has built up through the years, and upon which the existence of the company depends." Thus, the effect of such an order, it argues, would be to convert its private property to public use without its consent, contrary to the due process clause of the Constitution. It calls attention to the following observation made by the court in *Champlin Refining Co. v. United States, supra*, page 35, in response to a similar contention made therein:

> But our conclusion rests on no such basis and affords no such implication. * * * The appellant in its entire period of operation has never been asked to carry the products of another and may never be. So far, the Commission has made no order which changes the appellant's obligations to any other company or person. If it does, it will be timely to consider concrete requirements and their specific effects on appellant.

Respondent is not contending that is subjection, insofar as the pipe-line operation is concerned, to the requirements of Section 20 of the act would be the
493 equivalent of converting its private property to public use, in contravention of the fifth amendment. As stated, the provisions of part 1 of the act are specifically made to apply to common carriers engaged in the transportation of oil by pipe line, and the term "common carrier" as used in that part includes "all pipe-line companies." The Supreme Court has held that Champlin's operation is transportation within the meaning of the act. After referring to the holding relating to the Uncle Sam company in *The Pipe Line Cases, supra*, the Court said, page 33:

> But we think it would expand the actual holding of that case to apply its conclusion to Champlin. The controlling fact under the statute is transporting commodities from State to State by pipe line.

The controlling facts surrounding the operation of this pipe line, including the pricing method in its ultimate result, are the same now as they were then.

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As pointed out, respondent in its pipe line has never transported oil belonging to another, and there has never been and is not now any physical connection between its pipe line and any other pipe line or facility which would permit the use of respondent's line by any one but its owner. So far as appears, no other pipe-line company has threatened to force such a connection, and because of the ample common-carrier pipe-line facilities available, as revealed by respondent, no refinery would be likely to interest itself in such a connection. Nor are we referred to any order of this or any other governmental agency which would require such a result, or to any law, State or Federal, which would support such an order. So far as appears, therefore, the filing of tariffs and of annual and other reports would not prove to be a hardship to respondent and would not deprive it of any of its traffic or of the free use of its property
494 including the pipe-line facilities, without interference from its competitors.

Whether or not the effect of a requirement that respondent comply with provisions of section 6 or section 20 of the act would be tantamount to taking private property for public use in contravention of the fifth amendment is an issue the determination of which is peculiarly within the province of the courts, and we shall make no attempt to pass upon it. All we are called upon to do, and all we are attempting to do here, is to determine whether or not the facts presented warrant a finding that respondent's pipe-line operation is "transportation" of a "common carrier" as those terms are used in section 1 of the act and as they have been interpreted by the Supreme Court.

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We find that the Champlin Refining Company is a statutory common carrier of refined petroleum products by pipe line from one State to other States, and that it is subject to the provisions of the Interstate Commerce Act. An appropriate order will be entered requiring compliance with the provisions of sections 6 and 20 of the act.

SPLAWN, *Commissioner*, dissenting in part:

I disagree with the conclusions and finding in this report which require respondent, Champlin Refining Company, to comply with section 6 of the Act concerning the publishing, posting, and filing of tariffs.

Transportation of petroleum products by pipe line was made subject to the Act by an amendment in 1906. The circumstances in which that amendment was passed are stated in *The Pipe Line Cases*, 234 U. S. 548, 558-559. In that proceeding, certain large oil companies, through their ownership of pipe lines, had obtained a monopoly of the
495 only practicable oil transportation between the oil fields each of California and the Atlantic Ocean, and refused to transport any oil unless it was sold to them. The Court sustained our order which required those companies to file tariffs, pointing out (p. 560) that the "evident" purpose of the amendment "was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."

Here, the material factual situation is quite different. The pipe line under consideration in the instant proceeding is owned by Champlin, and the line always has been used exclusively to transport Champlin's own refined petroleum products from its refinery at Enid, Okla., to its storage

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facilities at Hutchinson, Kans., Superior, Nebr. and Rock Rapids, Iowa. Champlin utilizes the entire capacity of this pipe line on a full time basis.

Thus, the evidence is clear that there has been, and is, no holding out by Champlin of a common carrier service either directly or indirectly. None of the products moved through the line has ever been purchased from any other interest. Moreover, the evidence shows that the products transported through Champlin's pipe line constitutes an inconsequential part of the total volume of products that moves by pipeline to the consuming territory served by Champlin from its storage facilities.

Requiring Champlin to comply with our valuation orders and the requirements of section 20 of the Act with respect to accounting and the filing of annual and other reports is one thing, but to require it to file tariffs and thereby obligate itself to transport oil products of others in common carrier service, to the exclusion of its own, is something entirely different. The Supreme Court, in sustaining our valuation orders, it seems to me, recognized that there might be some such distinction. Concerning appellant's (Champlin's) contention that our valuation orders convert a
496 private pipe line into a public utility and require a private carrier to become a common carrier, the

Court said "But our conclusion rests on no such basis and affords no such implication." And after pointing out that our valuation orders only required Champlin to furnish certain information as to facilities being used in interstate marketing of its products, the Court held that, "The commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier." *Champlin Rfg. Co. v. United States*, 329 U. S. 29, 34-35.

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I can not agree with the conclusion in this report that the filing of tariffs by Champlin will not be a hardship, or deprive it of the free use of its pipe-line facilities in the conduct of its refining business. On the contrary, it is reasonable to assume that Champlin will be called upon to perform the transportation service held out under its duly published tariffs; otherwise, it seems we are requiring a vain act for which there is no justification in law or sound reason.

The publishing of tariffs pursuant to the finding in this report will place upon Champlin the legal obligation to perform the transportation service specified in those tariffs, and to conform to the requirements of section 1(4) of the act which provides that "It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates" etc.

The purpose of the amendment in 1906 was to protect small independent producers from monopoly power. This report construes that amendment so as to convert into a common carrier the pipe line wholly owned and completely utilized by a relatively small independent company,
497 though the company is wholly dependent upon such facility exclusively owned and used in the conduct of its refining business. This ultra literal construction regardless of differing conditions and circumstances might well have the effect of destroying small independent companies instead of affording them the protection intended by the amendment.

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MITCHELL, *Commissioner*, dissenting:

I cannot agree that Champlin is a common carrier by pipe line subject to our jurisdiction. That all pipe lines

crossing state lines are subject to the Interstate Commerce Act is negatived by *The Pipe Line Cases*, 234 U. S. 548, where with respect to the Uncle Sam Oil Company, the Supreme Court expressly holds that private pipe-line transportation is lawful notwithstanding the terms of the Interstate Commerce Act.

The facts are not in dispute. Champlin has never sold products from the refinery at Enid. The products are sold from its three storage terminals. The products are never consigned to any particular customer. Champlin is the sole owner of the products in storage which have come to rest as a mere incident of Champlin's private business. The change in pricing method removes one of the grounds on which the Supreme Court found that Champlin came under the Act for the purpose of valuation reports. It is to be remembered that Champlin supplies less than 2 percent of the gasoline consumed in the marketing area.

Section 19a provides only that we shall report the value of all property owned or used by every common carrier subject to the provisions of the Act. It is necessary to go to section 1 (1) (b) and section 1 (3) to determine when an enterprise is subject to the Act. Section 1 does not contemplate that a pipe line carrying only its own products as an incident to its principal business and not offering its services to the public is engaged in the transportation of oil as a common carrier. Section 1 (3) (a) in stating that the

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term common carrier includes all pipe-line companies obviously means all of

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those pipe-line companies engaged in the interstate transportation of oil for the public. It could not include pipe lines wholly within a state unless such pipe lines engaged in interstate transportation for all who offered shipments.

To require that Champlin publish and file tariffs with us can only be for one purpose, viz; to make Champlin's pipe lines available for use by all shippers. If that is not the purpose, then the requirement that tariffs be filed is an idle and futile gesture. If, following the filing of tariffs, Champlin's pipe line is used by other shippers, then to the extent of that use we are depriving Champlin of the use of its own pipe line for its own products.

The majority find that the entire capacity of the pipe line is used in transporting the products of Champlin's re-

finery. If the pipe line is not used by others, Champlin will be the carrier and the sole shipper. Champlin will tender shipments to itself; it will bill itself; it will give notice of arrival at destination to itself; and it will pay itself. It was never intended that an interpretation of the Act should bring about such a situation.

COMMISSIONERS PATTERSON and JOHNSON did not participate in the disposition of this proceeding.

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Appendix

The portions of section 20 of the Interstate Commerce Act pertinent to this proceeding are as follows:

(1) The Commission is hereby authorized to require annual, periodical, or special reports from carriers (as defined in this section) and from lessors (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers and lessors specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classifying such carriers and lessors as it may deem proper for any of these purposes. Such annual reports shall give an account of the affairs of the carrier or lessor in such form and detail as may be prescribed by the Commission.

(2) Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission. Such periodical or special reports as may be required by the Commission under paragraph (1) hereof, shall also be under oath whenever the Commission so requires.

(3) The Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this part, prescribe a uniform system of accounts applicable to any class of carriers subject thereto, and a period of time within which such class shall have such uniform system of accounts, and the manner in which such accounts shall be kept.

(4) The Commission shall, as soon as practicable, prescribe for carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. The Commission may, when it deems necessary, modify the classes and rates so prescribed. When the Commission shall have exercised its authority under the foregoing provisions of the paragraph, carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the Commission, and no such carrier shall include under operating expenses any depreciation charge in any form whatsoever other than as prescribed by the Commission.

* * *

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(8) As used in this section the words "keep" and "kept" shall be construed to mean made, prepared, or compiled, as well as retained; the term "carrier" means a common carrier subject to this part, and includes a receiver or trustee of such carrier; and the term "lessor" means a person owning a railroad, a water line, or a pipe line, leased to and operated by a common carrier subject to this part, and includes a receiver or trustee of such lessor.

The pertinent provision of section 6 of the act is as follows:

(1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. * * *

501 At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., on the 13th day of June, A. D. 1949.

No. 29912

CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS

No. 29912 (Sub-No. 1)

CHAMPLIN REFINING COMPANY TARIFFS

Order

IT APPEARING, That by order dated February 2, 1948, the Commission, by Division 1, upon its own motion instituted an investigation in No. 29912, for the purpose of inquiring into the acts, practices and conduct of the Champlin Refining Company with respect to its failure to comply with the requirements of section 20 of the Interstate Commerce Act (49 U. S. C. 20) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto with respect to accounting and the making and filing of annual and other reports;

IT FURTHER APPEARING, That by order dated March 3, 1948, the Commission, by division 2, upon its motion, instituted an investigation in No. 29912 (Sub—No. 1) into the acts practices and conduct of said Champlin Refining Company with respect to its failure to comply with the requirements of section 6 of the Interstate Commerce Act (49 U. S. C. 6) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto with respect to the publishing, posting, and filing of tariffs;

IT FURTHER APPEARING, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and has found the said Champlin Refining Company to be a common carrier of refined petroleum products by pipe line and subject to the provisions of the Interstate Commerce Act:

IT IS ORDERED, That the said Champlin Refining Company be, and it is hereby, notified and required to file with the Interstate Commerce Commission annual, periodical, or special reports as required by the provisions of

paragraphs (1) and (2) of section 20 of the Interstate Commerce Act (49 U. S. C. 20) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto.

IT IS FURTHER ORDERED, That the said Champlin Refining Company be, and it is hereby, notified and required to institute and henceforth maintain a uniform system of accounts applicable to pipe lines, as required by the provisions of paragraphs (3), (4) and (8) of section 20 of the Interstate Commerce Act (49 U. S. C. 20) and the orders and regulations of the Interstate Commerce Commission made pursuant thereto.

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IT IS FURTHER ORDERED, That said Champlin Refining Company be, and it is hereby notified and required to publish and file tariff schedules showing the rates and charges for interstate transportation of refined petroleum products between different points on its own route and between points on its own route and points on the Route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established, upon notice to this Commission and to the General Public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act (49 U. S. C. 6).

AND IT IS FURTHER ORDERED, That this order shall become effective September 29, 1949, and shall continue in force and effect until the further order of the Commission.

By the Commission.

W. P. BARTEL,
Secretary.

(SEAL)

504 Before
The Interstate Commerce Commission.

Nos. 29912 and 29912 (Sub. No. 1).

CHAMPLIN REFINING COMPANY
ACCOUNTS, REPORTS, AND
TARIFFS.

Petition for Reconsideration—Filed July 15, 1949.

Comes now, the Champlin Refining Company and respectfully prays that it be granted reconsideration of the report of the Commission (two Commissioners dissenting and two not participating) upon the above entitled matters dated June 13, 1949, and of the order of the Commission thereon.

The Champlin Company in said complained of report, is found to be,

> "* * * a *statutory common carrier* of refined petroleum products by pipe line from one state to other states and that it is subject to the provisions of the Interstate Commerce Act." (Italics ours.)

In support of this petition for reconsideration, petitioner states:

(a) That while most of the facts are undisputed, there is error in the statement of the Com-
505 mission that the exceptions and requested findings of the Respondent which were omitted from the Commission's report were not justified. Respondent alleges that on the contrary the exceptions and requested findings which were omitted from the report are true and correct and that they are material to the issues in this proceeding. The Respondent here renews its request that the Commission make all of the findings heretofore requested by the Respondent, and hereby renews all of the exceptions heretofore made by Respondent in these proceedings.

(b) Respondent further alleges that there is error in the conclusion of the Commission (p. 4 of the mimeographed copy of said report) which reads in part as follows:

> "It is still true however that the terminal price as posted takes into account the total costs of operating respondent's facilities including the pipe line."

in that such statement is not supported by the testimony.

The record clearly reveals that the only factor taken into consideration in posting terminal prices is competitive pricing. Of course, if such pricing becomes too low to permit Champlin to stay in the market and make its total cost of doing business, there is nothing left but to resign that particular market. But that is a far different thing than to say that costs are taken into consideration *when the prices are set.* There is only one factor
506 which determines the Champlin prices and that is competition. Champlin must sell at these competitive prices (or not sell at all) whether they result in a profit or a loss and whether or not they return the cost of doing business.

(c) There is further error in the remainder of the conclusion of said paragraph of said report (p. 4) which reads as follows:

> "* * * and since the prices at each terminal must be competitive, now as prior to May 10, 1948, the net price result must necessarily *approximate* what it would be under the differential method[1] * * *" (Italics ours.)

The Commission in making its conclusion, overlooked the fact that at one of the three terminals, namely, the Hutchinson terminal, the Champlin Company never applied differentials. The prices at that terminal have always been determined, as they are now, by the market prices set by the Kansas refineries.

Such *conclusion,* furthermore, is completely refuted by the findings of fact which are made a part of the identical paragraph of the report and read as follows:

> "The change-over on May 10, 1948, resulted in net *increases* or *decreases of from* ⅛ *cent to* ½ *cent* per gallon at *more than 70 per cent* of the destinations
> 507 served by respondent out of its Superior and Rock Rapids terminals. A *change of* ⅛ *cent per gallon or more* is recognized in the trade as substantial. *No separate charge* as such is now made *for transportation, either in the invoices or in any contract for the sale of its products.*" (Italics ours.)

NOTE 1. Formerly used by Champlin and referred to in the report as well as in the opinion of Mr. Justice JACKSON in *Champlin v. United States,* 329 U. S. 29.

The above findings show that the net price result under the new method of pricing did not in fact "approximate" what the prices were under the differential method.

(d) The said finding further shows that no charge as such is now made by Champlin for transportation. This is the essence of the issue. The abandonment of the differential method removed entirely any grounds upon which it could be stated that Champlin makes a charge or holds itself out to transport for a charge.

The Commission, in its report on the *Valuation* case, stated that it was the *differential* which represented the transportation charge. The Supreme Court stated that it was the *differential* which "points up a significant distinction" between Champlin and the Uncle Sam company. But now there is no differential, and the Commission finds that Champlin makes no transportation charge as such. So what is left to represent a transportation charge or to point up a distinction between Champlin and the Uncle Sam company?

The mere fact that the Champlin prices are in most instances sufficient to equal and exceed all of
508 its costs of doing business, is entirely immaterial to this issue. Every company which sells goods on the market must recover all of its costs of doing business if it expects to remain in business. When a customer buys shoes at a retail store, is the seller making a charge for the tanning of the leather? Is he making a charge for the manufacture of the shoes? Is he making a charge for the transportation of the shoes from the factory to the retail store? The answer is obvious; he is making no charges to the customer for these separate services. He has merely fixed a price for his merchandise. Likewise, it is beyond reason to state that the Champlin company, whose prices are strictly on a competitive basis, is making any charge to its customers for transportating its products, producing its raw material, refining its products, or for any other stage or step in the production or marketing process.

(e) There is further error in said report, last paragraph, p. 5 of the mimeographed copy thereof, which reads as follows:

> "As above shown, the change in the pricing method was a change *in name more than in substance*, the resulting terminal price, now as under the differential method, generally being the price made necessary by

competition and, as such, including the transportation cost or as much of it as was or is permissible under the prevailing competitive conditions. *There is no reason to believe that the Court would have reached a different conclusion had approximately the same pricing results been reached by a method other than the differential basis then in use.*" (Italics ours.)

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That such complained of paragraph is wholly contrary to and at variance with the related findings of fact quoted from p. 4 of the mimeographed copy of the report, *supra*.

(f) There is further error in such report, last paragraph, p. 7 thereof, in the failure to recognize that Champlin's status should be held to be within the rule of the *Uncle Sam* case, in view of the following quoted findings of fact, pp. 6 and 7 of said report, to-wit:

"* * * Champlin's marketing area, generally speaking, embraces the States of Kansas, Iowa, Minnesota, Nebraska, Colorado, and South Dakota. For all practical purposes, the entire capacity of the pipe line is used in transporting the products of Champlin's refinery for distribution in this area. Only about 1.98 per cent of the total gasoline consumed in the area is moved through the pipe line and sold from respondent's terminal storage facilities. The capacity of the pipe line, 9,800 barrels a day, represents only 5 per cent of the total products pipe-line capacity served by its Superior terminal and only 7 per cent of the total products pipe-line capacity served at markets adjacent to the Rock Rapids terminal. The total capacity of the common-carrier lines into the Nebraska market is about 13 times that of the Champlin line and about 10 times that of the latter into the Iowa market. The common carrier pipe-line capacity available to refineries in Oklahoma and Kansas aggregates 172,800 barrels a day, and respondent's pipe line is the smallest of any common-carrier or private pipe line operating in this territory. Apparently, common carrier pipe-line transportation is available to any small refiner in this area desiring such transportation.

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"Champlin's daily refining capacity of 18,000 barrels is small compared with the capacity of its large competitors in the same area. There are 86 wholesale outlets, including refineries, pipe line terminals, and barge terminals, in this marketing area which are com-

peting for the business of practically every prospective customer, and in addition, any jobber in the area may purchase his products from the 60 or more refineries in Oklahoma, Kansas, Arkansas, Illinois, Indiana, Texas, Wyoming, and Montana which deliver petroleum products into the territory by truck and rail.

"The foregoing facts are cited by respondent to show that its pipe line is not clothed with a public interest and, in fact, is not deeded for public transportation. It points out that in both *The Pipe Line Cases, supra*, and *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, the pipe-line transportation therein concerned, excepting that of the Uncle Sam Oil Company in the first proceeding was held to be transportation within the meaning of the act because the pipe-line companies were carrying for others 'all oil offered', as in the first proceeding, and a 'public-interest' was found 'in the sole means of transporting this commodity from thousands of wells for thousands of producers,' as in the second proceeding. In contrast, respondent emphasizes that it refines its own oil, moves only its own products through its own pipe line, stores its
511 own products in its own storage facilities, where some of them are further processed, and subsequently markets its products from its storage tanks in the ordinary course of business."

The fundamental difference between the situation here and in the *Pipe Line Cases*, 234 U. S. 548, 58 L. ed. 1459, is that in the *Pipe Line Cases, supra*, the producers of crude oil were without other means to get their product to a market, whereas here, as the Commission has found, common carrier pipe line transportation is available to any shipper who may have use for the same. Furthermore, no one is required to deal with the Champlin Company in the purchase of its refined products, there being immediately available to such purchaser in the trade territory, like products of equal grade manufactured by other concerns at competitive prices. The customer here deals at "arm's length" and wholly at his option with Champlin, while in the *Pipe Line Cases, supra*, the producer could only deal at the "mercy" of the pipe line operator.

This distinction in principle marks the basic difference between the *Champlin* case and the *Pipe Line* and *Valvoline*

cases, and presents an insurmountable obstacle to the interpretation sought to be adopted in this report by the Commission.

There is further error in the assumption in said report, last paragraph, p. 7 thereof, so often variously repeated in this litigation, that Mr. Justice HOLMES intended to
512 say in substance that the only kind of private interstate pipe line that could be operated would be one that was,

"* * * simply drawing oil from its own wells across a state line to its own refinery for its own use."

The statement, last 4 lines, p. 7 of the report,

"The situation before us differs. Champlin's pipe line *is not used for drawing oil to its own refinery. It is used to transport refined products from its refinery to interstate points for sale.*" (Italics ours),

goes far afield from Mr. Justice HOLMES' intention. He was not considering *types of products* or *field operations*. He was solely concerned with *private* use as distinguished from *public* use.

It is particularly important at this juncture to quote from the concurring opinion of Mr. Chief Justice WHITE in the *Pipe Line Cases* (234 U. S., pp. 562-563) as follows:

"The Chief Justice, concurring:

"* * * It is shown beyond question that the (Uncle Sam) company buys no oil, and by the methods which have been mentioned simply carries its own product to its own refinery; in other words, *it is engaged in a purely private business*. Under these conditions in my opinion there is no power under the Constitution without the exercise of the right of eminent domain to convert without its consent the *private business* of the company into a *public one*." (Italics and language in parenthesis is ours.)

There can be no escape from the constitutional
513 landmarks which are thus identified by the distinguished former Chief Justice, and this report should so conclude.

(g) The report of the Commission contains further error on page 8 thereof, in the assumption that any private pipe line which crosses a state line may be converted into a public carrier, merely because it was constructed after the date of the enactment of the Interstate Commerce Act.

The theory that the private property of a citizen is not safe from confiscation if it happens to have been constructed or acquired after the enactment of an Act of Congress, would so undermine the constitutional guaranties which have hitherto protected the American citizen in his right to own private property, that we cannot conceive of any court adopting or adhering to the same. Certainly the pipe line cases were not decided upon this theory and we earnestly believe that the Commission has placed a wrong interpretation upon the *dictum* of Mr. Justice HOLMES in this respect. It is apparent from the context, that when he was referring to "future pipe lines," he was referring to those which "are common carriers in substance."

Mr. Justice HOLMES, in the exception granted the Uncle Sam Oil Company in the *Pipe Line Cases, supra*, specifically destroyed the "statutory pipe line" doctrine announced herein by the majority of the Commission.

514 Furthermore, Mr. Justice JACKSON did not accept such hypothesis when argued by the government in the *Champlin Valuation* appeal.

Nevertheless, the original position of the Commission (24 I. C. C. 1) which was overruled in the *Pipe Line Cases, supra*, as to the Uncle Sam Oil Company, is again reasserted in this report in the formula that the mere laying of a pipe line across state lines, if constructed after the enactment of the statute, is all that is required (regardless of the use to which the owner may subject such line) to make such pipe line a common carrier within the jurisdiction of the Commission.

Such a position amounts to an attempt to so narrow the meaning of the *Uncle Sam* case as to distinguish it away entirely. Certainly such position is not justified in view of the fact that the Supreme Court has on two occasions, in the *Valvoline* and *Champlin* cases, strongly reaffirmed its holding in the *Uncle Sam* case, and in view of the further fact that the holding in the *Uncle Sam* case to the effect that private property is to be protected under the Constitution, is as fundamental as American liberty itself.

Furthermore, such position disregards the decision of the Supreme Court of the United States in *Producers Transportation Co. v. Railroad Commission of California*, 251 U. S. 228, 64 L. ed. 242. The mere transportation of a product through a pipe line, as so clearly decided by

515 the Supreme Court of the United States in these two instances, does not of itself determine the status of the pipe line so employed. There must be something more than private operation of the pipe line in question.

(h) There is further error in the failure of the Commission to give effect to Respondent's contention found by the Commission, bottom of p. 8 and top of p. 9 of the mimeographed copy of said report, as follows:

> "Respondent argues that if it is required to comply with the provisions of Section 6 of the act with respect to the filing of tariffs, it will be assuming the duties of a common carrier and thus be committing itself to open its line to the use of the public, so that its competitors could establish physical connections with it and largely absorb its line for their own use, thereby depriving the refinery served by the pipe line 'of the only available market which it has built up through the years, and upon which the existence of the company depends.' Thus, the effect of such an order, it argues, would be to convert its private property to public use without its consent, contrary to the due process clause of the Constitution. * * *."

To quote the admonition of Mr. Justice JACKSON in *Champlin* v. *United States, supra* (middle of p. 9 of the mimeographed copy of said report), as follows:

> "But our conclusion rests on no such basis and affords no such implication. * * * The appellant in its entire period of operation has never been asked to
516 carry the products of another and may never be. So far, the Commission has made no order which changes the appellant's obligations to any other company or person. If it does, it will be timely to consider concrete requirements and their specific effects on appellant,"

without further consideration being given thereto, is manifest error.

The very order being entered and of which we complain,

> "* * * changes the appellant's obligations"

to other companies and persons.

It is timely now to,

> "* * * consider concrete requirements and their specific effects on appellant,"

and the failure to do so in this report constitutes unconstitutional and reversible error.

To say that the,

"* * * controlling facts surrounding the operation of this pipe line, including the pricing method in its ultimate result are the same now as they were then," (bottom p. 9 of the mimeographed report)

fails to give recognition to the evidence in this proceeding, and furthermore fails to give consideration to Mr. Justice JACKSON's quoted warning.

(i) There is further error on page 8 of the report, in that the Commission assumes that the Champlin company is a pipe line *company* and that it is thereby automatically within the provisions of the Act.

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Champlin of course is not a pipe line company, for it is not engaged exclusively or principally in the pipe line business. It is a refining company and its pipe line is a mere incident to its principal business of refining and marketing petroleum and its products. As stated in our brief in support of our exceptions, Champlin cannot any more be characterized as "a pipe line company," than a hotel, incidentally operating elevators in the conduct of its business, can be designated as "an elevator company."

It will be noted in this connection that the report did not quote all of Section 1(3) (a) of the Act. As the Commission said, the Act states:

"(3) (a) The term 'common carrier' as used in this part shall include all pipe line companies * * *"

but the Act goes on to say:

"and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid *as common carriers for hire.*"

From this, it will be seen that although the Act defines the term "common carrier" as including, "all pipe line *companies,*" it does not define the term as including *all pipe lines.* On the contrary, after the Act states that the term shall include all pipe line *companies,* it then says that

518

the term shall also cover all *persons* engaged in the aforesaid transportation *as common carriers for hire.* The meaning is plain that if a company is engaged exclusively in an interstate pipe line business as a pipe line company, it is to be considered as a common carrier under the Act, but if a person does not engage exclusively in such business, *i. e.*, is not a pipe line *company,* such person is to be construed as a common carrier *only* if he or it is in fact "a common carrier for hire."

If Congress had intended that the term, "all pipe line companies" should mean, "all pipe lines," it would merely have said, "all pipe lines." It surely would not, in the

definition of such a simple term as "all pipe lines," have used the following plethora of language:

> "all pipe line companies * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire."

The Commission's construction of the Act would make the latter clause utterly meaningless.

The broad language of the Court in *Champlin v. United States, supra,* as quoted by the Commission, must be read in connection with the other language in that opinion. It will be seen that "transportation" has a technical and distinct meaning in the Act. As the Court said in the *Uncle Sam Case,* the term, transportation *"in the sense in*
519 *which it was used in the Act,"* does not cover private operation. Therefore, when the Court said in the *Champlin* case, that "the controlling fact under the statute is *transporting* commodities from state to state by pipe line," it was speaking of transportation *"in the sense in which it was used in the Act,"* that is, transportation which is not a strictly private operation.

(j) The Commission erred further in assuming that Congress has singled out the pipe line industry for a sweeping prohibition of private operation, as distinguished from motor carriers, water carriers, and private railroads. This assumption completely disregards the holding of the Supreme Court in the *Uncle Sam Case* that the Act *did not abolish private transportation by pipe line.* It disregards further the clear Congressional approval of the court's construction of the Act, as shown by the fact that Congress has made no attempt to amend the Act in this regard since the Supreme Court made its fundamental declaration in the *Uncle Sam Case* some 35 years ago.

The Commission moreover has repeatedly recognized in motor carrier cases that private transportation is a necessary incident to the carrying on of private business, and that transportation service which is incidental to the principal business of the company is not transportation for hire
520 by common carrier or otherwise, and is not to be regulated as such. What justification can be found for a different definition of private transportation as applied to pipe lines?

Certainly there can be no justification in the language of the different statutes, inasmuch as Congress has made it clear, by accepting the Court's construction, that the Act does not permit public appropriation of private pipe line transportation, just as it does not permit public appropriation of private motor carrier transportation.

(k) Respondent states that there is further error on page 9 of the report in which the Commission states that Respondent is not contending that its subjection, in so far as the pipe line operation is concerned, to the requirements of Section 20 of the Act would be the equivalent of converting its private property to public use, in contravention of the Fifth Amendment.

On the contrary, the Respondent has alleged in its pleadings and in its briefs, throughout these proceedings, that the requirements of Section 20, as well as the requirements of Section 6, were unconstitutional as applied to the pipe line operation of the Respondent.

This is made clear by the following allegations which are contained in the "Response" which was filed in these proceedings by the Respondent:

"Respondent now avers that the requirement of
521 the Bureau of Transport Economics and Statistics that respondent adopt common carrier accounting procedure and file annual and other common carrier reports and of the Bureau of Traffic that respondent post, publish and file tariffs will, without compensation therefor, convert the 'respondent's private pipe line into a public utility' and will require the respondent as a 'private carrier to become a common carrier,' all in violation of the law.

"That such requirements, if carried out, will change the respondent's obligation to other companies and persons and will compel the respondent to accept the obligations of a common carrier and to carry petroleum products for its competitors and others, to the destruction of its business as a producer and refiner of crude oil and marketer of the products thereof, and to so construe the Act exceeds the commerce power of Congress and violates the due process clause of the Fifth Amendment to the Constitution."

The Respondent stated on page 32 in its brief, filed in these proceedings, as follows:

"It is clear that a requirement as to filing tariffs, as well as a requirement to institute a system of accounts, would raise serious constitutional questions and that it would be proper to construe the Act, if possible, to prevent such questions arising."

Furthermore, in the argument before the Commission, counsel for the Respondent emphatically stated that the
Respondent's position as to the accounts and reports
522 have not been abandoned. The following quotation is from page 171 of the transcript:

Chairman Mahaffie: "Mr. Glasser, will you answer Mr. Underwood's last observation on the inquiry as to whether or not you abandoned 29912?"

Mr. Glasser: I will answer that very quickly. We most certainly have not. Our time is so limited and I am trying to discuss the matters which we think are most important and of most interest to the Commission which are in the briefs and exceptions."

(l) There is error in the whole of the following quoted portions (p. 10 of the mimeographed copy of the report) as follows:

"So far as appears, no other pipe-line company has threatened to force such a connection, and because of the ample common-carrier pipe-line facilities available, as revealed by respondent, no refinery would be likely to interest itself in such a connection. Nor are we referred to any order of this or any other governmental agency which would require such a result, or to any law, State or Federal, which would support such an order. So far as appears, therefore, the filing of tariffs and of annual and other reports would not prove to be a hardship to respondent and would not deprive it of any of its traffic or of the free use of its property, including the pipe-line facilities, without interferences from its competitors,"

in that they, *(1)* assume facts not in evidence; *(2)* indulge in conclusions which are contrary to the facts which
523 are in evidence; *(3)* are contrary to human experience; and *(4)* on their face condemn the whole procedure as "an idle and futile gesture" as pointed out by Commissioner MITCHELL in his dissenting opinion.

The Commission's conclusion that even though Champlin is *made* a common carrier, it could not be required to be operated as such, disregards, as Commissioner SPLAWN emphasized in his dissent, the requirements of Section 1 (4) of the Interstate Commerce Act that it is,

"the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers."

The Commission's conclusion also disregards the statement of Mr. Justice REED that the publication of tariffs by Champlin would compel the company to,

"provide *equal* and reasonable transportation to all comers." (*Champlin Refining Company v. United States*, 329 U. S. 29, dissenting opinion.)

The Commission's conclusion also disregards the undisputed evidence which shows that an order making the Champlin line a common carrier, would place its larger and more powerful competitors in a position to appropriate a substantial portion of the line and thereby take from Champlin a substantial portion of its markets. It is
524 true, as the Commission finds, that there is ample common carrier pipe line service for any refinery in this area which may require the same. But it is also true that Champlin's powerful competitors are always looking for an opportunity to expand their own markets, and if the Champlin line should be made a common carrier by administrative fiat, there would be nothing to prevent those competitors from appropriating Champlin's markets by the simple expedient of using a substantial portion of the Champlin line. It would not be a case of these companies *needing* additional common carrier facilities, but rather of desiring to expand their own markets at Champlin's expense. Every other small refinery which depends upon a private pipe line to supply its single available market would be in the same position as Champlin.

As Commissioner SPLAWN stated in his dissenting opinion:

> "This ultra literal construction regardless of differing conditions and circumstances might well have the effect of destroying small independent companies instead of affording them the protection intended by the amendment."

(i) There is further error of law in the conclusion (bottom of p. 10 of the mimeographed report) which reads as follows:

> "All we are called upon to do, and all we are attempting to do here, is to determine whether or not the facts presented warrant a finding that respondent's
> 525 pipe-line operation is 'transportation' of a 'common carrier' as those terms are used in Section 1 of the Act and as they have been interpreted by the Supreme Court."

The Respondent urges the Commission to give consideration to Mr. Justice JACKSON's quoted, *supra*, statement before it makes an order which changes the "appellant's obligations to any other company or person," and to give recognition of Mr. Chief Justice WHITE's conclusions before it attempts to take petitioner's business without compensation. These are what the Commission is in fact *called upon* to do in these proceedings.

(j) The ultimate finding of the Commission (top of p. 11 of the mimeographed copy of the Report),

> "* * * that the Champlin Refining Company is a *statutory common carrier* * * * and is subject to the provisions of the Interstate Commerce Act,"

is wholly contrary to and unsupported by the evidence, is at variance with the Interstate Commerce Act as interpreted by the *Uncle Sam* case, and has the effect of taking private property for public use without compensation in contravention of the Fifth Amendment to the Constitution of the United States.

Petitioner asks that an order be entered adjudging that these proceedings be dismissed and that the Champlin company be relieved of publishing tariff schedules and
526 be relieved of making reports and maintaining a uniform system of accounts applicable to common carrier pipe lines.

Respectfully submitted,

/s/ HARRY O. GLASSER,
Harry O. Glasser,
305 Knox Building,
Enid, Oklahoma,

NATHAN SCARRITT,
Champlin Refining Company,
Enid, Oklahoma,

E. S. CHAMPLIN,
Champlin Refining Company,
Enid, Oklahoma,

/s/ SAMUEL H. HORNE,
Samuel H. Horne,
1145 Munsey Building,
Washington, D. C.,
Attorneys for Champlin Refining Company.

527

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Jul 15 '49 988754

Before
The Interstate Commerce Commission.

CHAMPLIN REFINING COMPANY

ACCOUNTS, REPORTS, AND
TARIFFS.

Nos. 29912 2nd 29912 (Sub. No. 1)

Proof of Mailing Service Copies.

This is to certify the undersigned caused copies of petition for Reconsideration, in above styled case, to be placed in the United States mails, with proper postage prepaid, addressed to Mr. H. L. Underwood, Legal Department, Interstate Commerce Commission, Washington, D. C., and Mr. J. Paul Kelley, Examiner, Interstate Commerce Commission, Washington, D. C., this 14th day of July, 1949.

GUYETTE-HUMPHRY-ATKINS,
By Thos. C. Humphry, Jr.

Interstate
Commerce Commission
Jul 15 1949
Section of
Mails and Files

State of Oklahoma,)
County of Tulsa.) ss.:

Subscribed and sworn to before me this 14th day of July, 1949.

CONSTANCE TAYLOR,
Notary Public.

(SEAL)

My commission expires 10-29-49.

528 At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 21st day of July, A. D. 1949

No. 29912

CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS
No. 29912 Sub. No. 1

CHAMPLIN REFINING COMPANY TARIFFS

Order denying petition for reconsideration

Upon further consideration of the records in the above-entitled proceedings, and upon consideration of respondent's petition for reconsideration, and it appearing that good cause for reconsideration of the proceeding has not been shown;

IT IS ORDERED, That the said petition be, and it is hereby, denied.

By the Commission.

W. P. BARTEL
(SEAL) *Secretary.*

529 *Commission's Exhibit No. 1*

INTERSTATE COMMERCE COMMISSION
Bureau of Transport Economics and Statistics

September 15, 1947

Mr. Nathan Scarritt
Vice Pres. Champlin Refining Company
Enid, Oklahoma

Dear Sir:

On June 12, 1944, the Interstate Commerce Commission issued a report and order in Valuation Docket No. 1267, in which it was found that the Champlin Refining Company is a common carrier subject to the provisions of the Interstate Commerce Act.

Under the terms of Section 20 of the said Act, "common carriers" are required to file statistical reports with the I. C. C., and to set up and keep their accounts in conformity with the system of accounts, and related regulations, prescribed by this Commission.

For the benefit of Champlin Refining Company in complying with the reporting and accounting requirements es-

tablished pursuant to Section 20, I am sending you under separate cover copies of the forms and orders which apply, together with related memorandum pertaining to preparation of the principal report.

The documents being mailed to you separately at this time are as follows:

(a) A specimen of "Annual Report Form P (Carriers Pipe Line)," together with copy of an order requiring its filing, and a memorandum of special instructions pertaining to its preparation by corporations engaged in producing, refining, and marketing petroleum.

(b) A supply of forms for the "Quarterly Report of Pipe Line Companies Having Annual Operating Revenues of More than $500,000," together with copy of an order requiring the filing of such reports.

(c) A copy of the "Uniform System of Accounts for Pipe Lines," as prescribed by the Commission, together with copies of certain supplemental orders, amendatory thereof.

(d) A copy of the Commission's "Regulations to Govern the Destruction of Records of Carriers by Pipe Line," together with copy of an order amendatory thereof.

530 Reports on Annual Report Form P should be filed in behalf of the Champlin Refining Company following the close of each calendar year, the first such report to be made for the year ending December 31, 1947. (Forms to be used in making the 1947 report will be mailed to your company's address early in 1948.)

If revenues from the operation of your Products Pipe Lines Department are in excess of $500,000 annually, the filing of Quarterly Reports of Pipe Line Companies should commence immediately (or in no event later than with a report for the Quarter ending December 31, 1947).

The accounts of your Pipe Line Department should be brought into harmony with the classifications prescribed in the Uniform System of Accounts for Pipe Lines, as promptly as possible, and without extraordinary delay.

Regulations Governing the Destruction of Records are self explanatory, and require no discussion here.

Please arrange to comply with the Commission's orders with respect to all matters brought to your attention here-

in; and advise me (at your early convenience) as to the name, official title, and office location of the officer of your company who will be responsible for the preparation of its reports and the keeping of its books of account.

Very truly yours,

W. H. S. STEVENS
Director,

By .....

Enclosures under
separate cover.

531 *Commission's Exhibit No. 2*

CHAMPLIN REFINING COMPANY
Enid, Oklahoma

October 7, 1947

NATHAN S. SCARRITT
Vice-President
Mr. W. H. S. Stevens
Director, Bureau of Transport, Economics & Statistics
Interstate Commerce Commission
Washington, D. C.

Dear Sir:

Your letter of September 15 has been received and we have given careful consideration to the subject therein discussed.

It is our understanding that the opinion of the United States Supreme Court in Champlin Refining Company vs. United States upheld the validity of the order to which you referred only in so far as the said order applied to valuation reports.

As you know, our products pipeline is owned and operated as a private carrier exclusively.

Our representative will be in Washington within 30 days or thereabouts and, because of the broad import of this case, we desire that he have the opportunity of conversing with you.

Will you kindly advise whether this will be agreeable, and if so a definite date may be fixed for the conference.

Very truly yours,

NATHAN SCARRITT

NS:Jat

532 *Commission's Exhibit No. 3*

CHAMPLIN REFINING COMPANY
Enid, Oklahoma

October 31, 1947

Interstate Commerce Commission,
Bureau of Transport Economics and Statistics,
Washington 25, D. C.

ATTENTION: W. H. S. Stevens, Director—
In the Matter of the Champlin Refining Company Products Pipe Line.

Dear Sirs:

Your letter of September 15, 1947 with regard to the above entitled matter has been received, and pursuant to the statement of the Champlin Refining Company position in the conference with your representatives on October 28, 1947, this is to advise that it is the firm belief of the officers and directors of the Champlin Refining Company that it is not a "common carrier" within the terms of Section 20 of the Interstate Commerce Act and is not required to file a statistical report with the Interstate Commerce Commission, nor to set up and keep its accounts in conformity with the system of accounts and related regulations prescribed by the Interstate Commerce Commission for "common carriers".

The Champlin Refining Company's products pipe line is owned and operated as a private carrier exclusively and the decision of the United States Supreme Court in *Champlin Refining Company v. United States*, 329 U. S. p. 29, upheld the validity of the June 12, 1944 report and order of the Commission in Valuation Docket 1267 only insofar as that report and order applied to valuation reports.

That the Champlin Refining Company did on the first day of August, 1947, in conformity with the order and judgment of the Supreme Court of the United States, file with the Bureau of Valuations in the Interstate Commerce Commission, its valuation report in proper form and that no further duty of any kind in connection with additional or further reports rests upon said company.

We therefore respectfully advise that if an order of the Bureau of Transport Economics and Statistics shall be entered requiring the Champlin Refining Company to file the data and reports requested, an appeal in due course

from such order will be taken to the Interstate Commerce Commission.

Very respectfully,

CHAMPLIN REFINING COMPANY,
By Harry O. Glasser,
Counsel.

HG:EP
Nov-3 '47 680910

533 *Commission's Exhibit No. 4*

TRC:MGD

Served:—9/30/47

BUREAU OF TRANSPORT ECONOMICS AND STATISTICS

September 24, 1947
(A)

MEMORANDUM

FOR THE SECTION OF DOCKETS:
(Mr. Gist)

Please make customary service on the
Champlin Refining Company

of the orders of the Commission of current effect with respect to pipe line companies as listed below:

Uniform System of Accounts for Pipe Lines, Issue of 1935, and supplemental orders of November 27, 1942, January 22, 1945, Dec. 23, 1946, and April 22, 1946.

Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, effective January 1, 1943, and supplemental order of February 6, 1947.

Order of the Commission dated October 20, 1938, In the Matter of Statistical Reports of Pipe Line Companies.

Order of the Commission dated February 11, 1947, In the Matter of Filing Annual Reports from Carriers by Pipe Lines.

W. H. S. STEVENS,
Director.

Attachment.

534

UNIFORM SYSTEM OF ACCOUNTS
for
PIPE LINES

Prescribed by the
INTERSTATE COMMERCE COMMISSION
in Accordance with Section 20 of the
Interstate Commerce Act

535

UNIFORM SYSTEM OF ACCOUNTS
for
PIPE LINES

Prescribed by the
INTERSTATE COMMERCE COMMISSION
in Accordance with Section 20 of the
Interstate Commerce Act

FIRST REVISED ISSUE
Effective on January 1, 1935

(SEAL)

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536 THE INTERSTATE COMMERCE COMMISSION

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CLAUDE R. PORTER
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HUGH M. TATE
CHARLES D. MAHAFFIE
CARROLL MILLER
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GEORGE B. MCGINTY, *Secretary.*

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539 ORDER

In the Matter of a Uniform System of Accounts to be Prescribed for and Kept by Pipe-Line Companies

Present: JOSEPH B. EASTMAN, Commissioner, to whom the above-named entitled matter has been assigned for action thereon.

It is ordered, That the Uniform System of Accounts for Pipe-Line Companies with the text pertaining thereto, embodied in printed form to be hereafter known as First Revised Issue, a copy of which is incorporated herewith be, and the same is hereby approved; that a copy thereof duly authenticated by the Secretary of the Commission be filed in its archives, and a second copy thereof, in like manner authenticated, in the office of the Bureau of Accounts; and that each of said copies so authenticated and filed shall be deemed an original record thereof.

It is further ordered, That the said Uniform System of Accounts for Pipe-Line Companies with the text pertaining thereto, be, and the same is hereby, prescribed for the use of pipe-line companies, subject to the provisions of the Interstate Commerce Act, in the keeping and recording of their accounts; that each and every such carrier and each and every receiver or operating trustee of any such carrier be required to keep all accounts in conformity therewith;

and that a copy of the said First Revised Issue be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

It is further ordered, That in order that the basis of comparison with previous years be not destroyed, any such carrier or any receiver or operating trustee of any such carrier may, during the 12 months from the time that the said First Revised Issue becomes effective, keep and maintain, in addition to the accounts hereby prescribed, such portion or portions of its present accounts as may be deemed desirable by any such carrier, or by any receiver or operating trustee thereof, for the purpose of such comparison; or, during the same period, may maintain such groupings of the primary accounts hereby prescribed as may be desired for that purpose.

It is further ordered, That any such carrier or any receiver or operating trustee of any such carrier, in addition to the accounts hereby prescribed, may unless otherwise ordered, keep any temporary or experimental accounts the purpose of which is to develop the efficiency of operation: *Provided, however,* That such temporary or experimental accounts shall not impair the integrity of any primary account hereby prescribed.

539a

It is further ordered, That any such carrier or receiver or operating trustee of any such carrier, may subdivide the accounts hereby prescribed to the extent necessary to secure the information required in the prescribed reports to commissions having jurisdiction.

It is further ordered, That the date on which the said First Revised Issue of the Uniform System of Accounts shall become effective, be, and is hereby, fixed on January 1, 1935.

Dated at Washington, D. C., this 16th day of November, A. D. 1934.

By the Commission, Commissioner Eastman.

[SEAL] GEORGE B. MCGINTY, *Secretary.*

539b

INTRODUCTORY LETTER

INTERSTATE COMMERCE COMMISSION,

THE BUREAU OF ACCOUNTS

Washington, D. C., November 16, 1934.

To Pipe-Line Companies:

This Uniform System of Accounts for Pipe-Line Companies will supersede the System of Accounts for Pipe-Line Companies, effective January 1, 1915.

Under the Interstate Commerce Act, the observance of the rules and regulations stated in this system of accounts becomes obligatory upon persons having direct charge of the accounts of the companies concerned, and such persons will be held responsible for their proper application.

Paragraph 6 of the twentieth section of the Interstate Commerce Act provides that:

> In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this act.

In formulating this system of accounts, this Bureau enlisted the cooperation of State commissions and of pipe-line companies. All suggestions and criticisms of these parties have been given most careful consideration. Many of the suggestions have been incorporated in these accounting rules.

This Bureau will be glad to give consideration promptly to all questions arising with regard to the correct interpretation of this system of accounts which are presented to it by the officers in charge of accounts of pipe-line companies.

ALEXANDER WYLIE, *Director.*

540

INSTRUCTIONS

GENERAL

1. RECORDS.—(A) The carrier's records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts.

(B) Where the full information is not recorded in the general books the entries therein shall be supported by other records in which the full details shall be shown and the general-book entries shall contain sufficient reference to the detail records to permit ready identification.

(C) The detail records shall be filed in such manner as to be readily accessible for examination by representatives of this Commission.

(D) Attention is directed to the following extract from section 20 of the Interstate Commerce Act:

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record of memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction, in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

The Commission's order specifying records which may be destroyed is contained in its "regulations to Govern the Destruction of Records."

(E) Accounts which are clearly summaries of other accounts prescribed herein (for example, account 55, "Funded debt unmatured", which summarizes the balances in the several funded debt accounts) are not required to be kept in the carrier's books. The assignments to primary accounts for "Carrier property", "Operating revenues", and "Operating expenses", between the accounts for "Gathering lines", and "Trunk Lines", and "General", or "General clearing accounts", shall be in accordance with the numbers shown on pages 36, 51, 81, and 52, respectively. All accounts kept shall conform in numbers and titles to those prescribed herein, except that:

(1) Carriers may subdivide any of the accounts, provided such subdivisions do not impair the integrity of the accounts prescribed.

(2) The titles of all such subdivisions or subaccounts shall refer by number or title to the accounts of which they are subdivisions.

(3) When subaccounts are thus kept, it is not required that the main accounts of which they are subdivisions also shall be kept in the carrier's books.

(4) Clearing accounts, in addition to those prescribed herein, may be kept when necessary in making the proper distribution of items to the appropriate primary accounts.

541 (5) As of the effective date of this system of accounts, the several accounts prescribed herein shall be opened by appropriately transferring thereto the balances carried in the accounts previously maintained by the carrier.

(6) The carrier is permitted for code or other purposes to prefix or suffix to the account numbers prescribed herein, letter or number designations providing that such additions do not impair the integrity of the prescribed account numbers.

(7) The carrier is authorized to make such subdivisions, reclassifications, or consolidations of such balances as are necessary to meet the requirements of this system of accounts.

(8) Temporary or experimental accounts may be kept in addition to the accounts prescribed herein for the purpose of developing the efficiency of operations, etc., provided such accounts do not impair the integrity of any accounts provided herein.

(F) The accounts for each month shall be recorded currently.

(G) The general-ledger balance of each suspense or open account as of the close of each month shall be verified by comparison with the total of the detail items covered therein, except that when so authorized by this Commission upon showing that the integrity of any ledger account can be maintained with less frequent verification of the balances, verifications may be made at periods designated in this Commission's specific authority.

(H) Balances shall be struck for each account at the close of each calendar year and the balances thus determined in each account at the close of each year shall be carried forward to the corresponding account for the succeeding year.

2. DEFINITIONS.—When used in this system of accounts the term:

(A) "Actually issued", as applied to certificates of capital stock or evidence of funded debt issued or assumed by the carrier means those which have been sold to bona fide purchasers for a valuable consideration (including those issued in exchange for other securities or other property) under the condition that the purchasers secured them free from all control by the issuing carrier.

(B) "Actually outstanding", as applied to certificates of capital stock or evidences of funded debt means those which have been "actually issued" and are not held by or for the carrier.

(C) "Affiliated companies", means:

(1) Controlled companies, i. e., companies solely controlled by the carrier, and also companies jointly controlled by the carrier and others under a joint arrangement.

(2) Controlling companies, i. e., companies solely controlling the carrier and also companies which jointly control the carrier under a joint arrangement.

(3) Companies controlled by controlled companies.

(4) Companies controlled by controlling companies.

(a) By "control", is meant the ability to determine the action of a company. For the purposes of this instruction the following are to be considered forms of control:

(1) Right through title to securities issued or assumed by the controlled company to exercise the major part of the voting power in the controlled company.

(2) Right through agreement or through sources other than title to securities to name the majority of the board of directors, managers, or trustees of the controlled company.

(3) Right to foreclose a priority lien upon all or a major part in value of the tangible property of the controlled company.

542 (4) Right to secure control in consequence of advances made for construction of the property of the controlled company.

(b) A leasehold interest in the property of a company is not, for the purpose of these accounts, to be classed as a form of control over the lessor company.

(c) Sole control is that which rests in one company.

(d) Joint control is that which rests in two or more companies, and which is held under a joint arrangement.

(D) "Book cost" or "Book value" means the amount at which assets are to be recorded in the accounts of the carrier.

(E) "Book liability" means the amount at which securities issued or assumed by the carrier and other liability items are to be recorded in the accounts of the carrier.

(F) "Carrier" means common carrier.

(G) "Carrier property" means physical property used in pipe-line service and physical property held for such service under a definite plan.

(H) "Cost of removal" means the cost of demolishing, tearing down, dismantling, removing, or otherwise disposing of carrier property and recovering the salvage.

(I) "Debt expense", as applied to debt, means all expenses in connection with the issue and sale of evidences of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds, certificates of indebtedness, and other commercial paper; fees paid trustees; specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing such evidence of debt; fees and expenses of listings on exchanges; and other like costs.

(J) "Delayed items" means items relating to transactions which occurred before the current calendar year, including adjustments of errors.

(K) "Depreciable accounts" are those in which it is required shall be recorded the cost of those classes of property for which depreciation changes in operating expenses and other accounts are prescribed by this system of accounts.

(L) "Depreciation" means the loss in service value (note instruction 2-CC) not restored by current maintenance and incurred in connection with the consumption or prospective retirement of physical property in the course of service from causes against which the carrier is not protected by insurance, which are known to be in current operation, and the effect of which can be forecast with a reasonable approach to accuracy.

NOTE.—Among the causes which may result in the loss of the service value of depreciable property are:

(a) Physical depreciation.

(b) Obsolescence.

(c) Inadequacy.

(d) Decline and exhaustion of the traffic which the property was designed to transport.

(M) "Discount", as applied to actually outstanding (note instruction 2-B) securities issued or assumed by the carrier, means the excess of the par value of the securities plus interest or dividends accrued at the date of the sale over the current money value of the consideration received at their sale.

(N) "Group plan", as applied to depreciation accounting, means the plan under which depreciation charges are accrued upon the basis of the book cost of all property included in each depreciable account, using the average service life thereof properly weighted, and upon the retirement of any depreciable property its full service value is charged to the depreciation reserve whether or not the particular item has attained the average service life.

543 (O) "Investment advances" means advances, represented by notes or by book accounts which it is mutually agreed or intended between the creditor and the debtor shall be settled by the issuance of the capital stock or funded debt and advances not subject to current cash settlement.

(P) "Minor items", as applied to carrier property other than land, means any part or element thereof which is not designated as a unit of property in appendix A.

(Q) "Nominally issued", as applied to certificates of capital stock or evidences of funded debt, means those which have been signed, certified, or otherwise executed and placed with the proper officer for sale or pledged or otherwise placed in some special fund of the carrier but which have not been sold.

(R) "Nominally outstanding", as applied to certificates of capital stock or evidences of funded debt, means those which, after being actually issued, have been reacquired by or for the carrier under such circumstances as require them to be held alive and not canceled or retired.

(S) "Nonaffiliated companies" means all companies other than those defined as affiliated in item (C) thereof.

(T) "Noncarrier property" means property neither used in nor held under a definite plan for pipe-line service or service incidental thereto.

(U) "Nondepreciable accounts" are those in which shall be recorded the book cost of those classes of property for which no charges to operating expenses for depreciation are permitted.

(V) "Original cost", as applied to carrier property, means the actual money cost of the property at the time it was first devoted to pipe-line service whether by the accounting carrier or by the predecessor pipe-line carrier.

(W) "Pipe-line operations" and "pipe-line service" mean the service by common carriers in transporting oil or other commodities, except water and natural or artificial gas, by pipe lines and service incidental thereto.

(X) "Premium" as applied to actually outstanding securities issued or assumed by the carrier, means the excess of the current money value of the consideration received at their sale over the sum of their par value and interest or dividends accrued at the date of the sale.

(Y) "Property retired", as applied to carrier property, means property which has been removed, sold, abandoned, destroyed, or otherwise withdrawn from pipe-line service, and not held for such service.

NOTE.—The dismantling or tearing down of a structure or a unit of equipment in order to replace parts thereof with improved parts, the purpose of which is to modernize the unit and to extend its life beyond its original expectation of life, shall be accounted a retirement, but the dismantling or stripping of such property only to the extent necessary to recondition or to replace in kind defective parts shall be accounted as repairs.

(Z) "Replacement" means the installation of physical property in substitution of other property which has been retired.

(AA) "Retirement", as applied to physical property, means the permanent withdrawal of the property from the service in which it has been used.

(BB) "Service life" means the period between the time of installation (note instruction 2-HH) and the time of retirement (note instruction 2-I) of carrier property.

(CC) "Service value", as applied to carrier property, is the book cost (note instruction 2-D) thereof plus the cost to the carrier of salvaging the property and less the value of the salvage (note instruction 2-JJ) therefrom.

NOTE.—The cost of recovering line pipe and fittings which are replaced in kind shall be included in operating expenses and not as a factor in the service value of such property. (See also text of accounts 602, 652, 752, "Repairs of pipe lines", and 603, 653, 753, "Changing of line construction.")

544 (DD) "Shop plant" means a shop or group of shops for the repairs and/or construction of carrier property.

(EE) "Straight-line method", as applied to depreciation accounting, means the plan under which the service

value of property is charged to operating-expense, carrier-property and clearing accounts and credited to account 74, "Accrued depreciation—Carrier property", through equal annual charges based on established rates applied to the book cost of the property during its service life.

(FF) "The carrier" means the accounting company.

(GG) "These accounts" means the accounts of the particular group to which the instruction relates; for example, if used in connection with the carrier's property accounts it means accounts 101 to 192, inclusive.

(HH) "Time of installation" means the date at which carrier property is completed and/or placed in pipe-line service.

(II) "Time of retirement" means the date at which carrier property is withdrawn from pipe-line service.

(JJ) "Value of salvage" means the amount received for property retired, or for the material salvaged therefrom, if sold, or if retained the value at which the property or the material salvaged therefrom is chargeable to account 17, "Material and supplies", or other accounts of this system of accounts.

3. UNAUDITED ITEMS.—When the amount of any known item affecting the income accounts cannot be accurately determined in time for inclusion in the accounts of the calendar year in which the transaction occurs, the amount of the item shall be estimated and included in the proper account and credited to account 78, "Other deferred credits", or charged on account 28, "Other deferred debits", as may be appropriate, the necessary adjustments to be made (through the account in which was recorded the estimate) when the item is audited. If, during the interval between the date of inclusion of the item in the accounts and the date on which it is audited, a substantial difference is determined between the initial estimate and the actual amount of the item, appropriate adjustment shall be made in the current accounts to cover such difference. The carrier shall preserve in its files a record of the information upon which this supplemental estimate is based. The carrier is not required to anticipate minor items which would not appreciably affect the accounts.

4. DELAYED ITEMS.—(A) Delayed items (note instruction 2-J) shall be charged or credited to the same accounts which should have been charged or credited if the items had been taken up or adjusted in the period to which they pertain. When the amount of a delayed item is relatively so large that its inclusion in the accounts for a single month would

seriously distort those accounts, it may be distributed in equal amounts within the current and remaining months of the calendar year.

(B) If the amount of any delayed item is relatively so large that its inclusion in the accounts for a single year would seriously distort those accounts, the carrier, if so authorized, upon application to this Commission, may distribute to surplus so much of the amount as may be authorized. In requesting the authority, the carrier shall file with this Commission the full particulars concerning each item and the reasons which, in its judgment, indicate the propriety of such accounting.

5. Profits and Losses From Foreign Exchange.—(A) Profits and losses from premiums and discounts on foreign exchange shall be included, so far as practicable, in the accounts appropriate for the transactions in connection with which such items arise. For example, profits realized and losses suffered due to the difference in rates of exchange between the date that money is borrowed or loaned and the date of payment or collection (not being incident
545 to current operations) shall be included in account 304, "Miscellaneous credits", or account 314, "Miscellaneous debits", as may be appropriate.

(B) Minor amounts of profits and losses on foreign exchange arising in the course of the carrier's operations and impracticable of allocation to each specific transaction involved shall be included in account 409, "Miscellaneous income", or account 415, "Miscellaneous income charges", as may be appropriate.

6. Interpretation of Item Lists.—Lists of "items" appearing in the texts of the several accounts are given for the purpose of clearly indicating the application of the accounting rules in specific cases. The lists are not to be considered as comprising all the items includible in the several accounts, but merely as representative of them. On the other hand the appearance of an item in a list, warrants the inclusion of such item in the account concerned only when the text of the account also indicates inclusion, inasmuch as the same item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts.

7. Submission of Questions.—To the end that uniformity of accounting may be maintained, the carrier shall submit all questions of doubtful interpretation of the accounting rules to this Commission for consideration and decision.

8. DEPRECIATION ACCOUNTING.—(A) Computing and filing of depreciation rates:

(1) The carrier shall file with this Commission composite annual percentage rates estimated to be applicable to the book cost (note instruction 2-D) of each class of depreciable carrier property owned or used by it. These percentage rates shall be based on the estimated service values (note instruction 2-CC) and service lives (notes instruction 2-BB) developed by a study of the carrier's history and experience and such engineering and other information as may be available with respect to prospective future conditions. These percentage rates shall be computed in conformity with the group plan (note instruction 2-N) of accounting for depreciation and shall be such that the loss in service value of the property, except for losses excluded under the definition of depreciation (note instruction 2-L) may be distributed under the straight-line method (note instruction 2-EE) during the service life of the property. Such percentage rates shall for each primary account comprised of more than one class of property, produce a charge to operating expenses for that account equal to the sum of the amounts that would otherwise be chargeable for each of the various classes of property included in the account. The annual percentage rates so filed shall be accompanied by a sworn statement showing the bases therefor and the methods employed in their computation. A carrier subject to the provisions of this system of accounts on January 1, 1935, shall file such percentage rates not later than September 1, 1935. A carrier which becomes subject to the provisions of this system of accounts after January 1, 1935, shall file such percentage rates within 6 months after the provisions of this system of accounts become applicable to it. The carrier shall be prepared at any time, upon direction of this Commission, to compute and submit for its approval revised percentage rates in cases where existing rates are deemed inapplicable.

(2) In the event any composite percentage rate prescribed by this Commission, in the judgment of the carrier, becomes no longer currently applicable, it shall in like manner file annual percentage rates which in its judgment should be established.

(3) The carrier shall keep such records of property and property retirements as will reflect the service life of property which has been retired, or will permit the de-

termination of service-life indications by mortality,
546 turn over, or other appropriate methods, and also such records as will reflect the percentage of value of the salvage (note instruction 2-JJ) for property retired from each class of depreciable carrier property (note instruction 8-E).

(B) *Depreciation charges.*—Charges for currently accruing depreciation shall be made monthly to account 613, 663, 763, "Depreciation," and corresponding credits shall be made to account 74, "Accrued depreciation—Carrier property." In computing the current monthly charges, one-twelfth of the composite annual percentage rate applicable to each primary account covering depreciable carrier property shall be applied to the balances as of the first of the current month in each such primary account.

(C) *Pipe-line construction.*—The percentage rates estimated to be applicable to the book cost of account 105, 155, "Pipe-line construction," shall be based on an estimate of the period between which the pipe line is constructed and its ultimate retirement. The current cost of removing and replacing less than units of pipe lines shall be included in accounts 602, 652, 752, "Repairs of pipe lines," and 603, 653, 753, "Changing of line construction." (Note instruction 38-C.)

(D) *Depreciation rates.*—A separate composite annual percentage rate for each account covering depreciable carrier property shall be used in computing depreciation charges. Such composite rates shall be those which are from time to time prescribed by this Commission, except that where no rates previously have been prescribed for the carrier's use by this Commission, the carrier's estimates of composite annual percentage rates computed in accordance with paragraph (A) of this instruction shall be used prior to the dates rates prescribed by this Commission become effective.

NOTE.—Where the composite rate as prescribed by this Commission has been developed by the application of component rates to the various subclasses of property within a primary account and a segregation of the property to which they are applicable is maintained or is available, such component rates may be used in computing the current depreciation charges (as long as the property to which they apply is in service and the estimated service lives, etc., upon which they are based remain the same) without a supplemental order, regardless of the fact that the amount of the various classes of property has so changed as to make possible the computation of a slightly different composite rate.

(E) *Classes of depreciable carrier property.*—The classes of depreciable carrier property and the accounts covering such property are as follows:

Gathering lines	Trunk lines	General		Page
102	152	.....	Rights of way	38
103	153	.....	Line pipe	38
104	154	.....	Line-pipe fittings	38
105	155	.....	Pipe-line construction	38
106	156	176	Buildings	38
107	157	.....	Boilers	38
108	158	.....	Pumping equipment	38
109	159	179	Machine tools and machinery	39
110	160	.....	Other station equipment	39
111	161	.....	Oil tanks	39
112	162	.....	Delivery facilities	39
113	163	183	Communication systems	39
114	164	184	Office furniture and equipment	40
115	165	185	Vehicles and other work equipment	40
116	166	186	Other property	40

(F) Except as provided in paragraph (G), upon the retirement of a unit of depreciable property the service value shall be charged in its entirety to account 74, "Accrued depreciation—Carrier property." The depreciation reserve shall be credited with the full amount of any insurance recovered.

547 (G) Upon proof by the carrier that the charge to the depreciation reserve in connection with the retirement of depreciable property will result in undue depletion thereof, with the approval of this Commission, it may charge to account 312, "Debits from retired carrier property", or to account 27, "Extraordinary maintenance suspense" (note text thereof), such part of the service value of the retired property which it is authorized to charge thereto. In case the amount of insurance recovered by the carrier, creditable to account 74, "Accrued depreciation—Carrier property", would unduly inflate that account, the carrier may credit to account 302, "Credits from retired carrier property", such part of the insurance recovered as it may be specifically authorized by this Commission to so credit. The application to this Commission for such special accounting shall give full particulars concerning the situation, and shall indicate the carrier's reason for the accounting proposed.

Balance-Sheet Accounts

21. Purpose of Balance-Sheet Accounts.—The balance-sheet accounts (1 to 82, inclusive) are designed to show the assets, liabilities, capital stock, and surplus or deficit of the carrier.

22. Current Assets.—(A) In the group of accounts designated as current assets (accounts 9 to 20, inclusive) there

shall not be included any item the book value of which is not reasonably assured except that items of current character but of doubtful value may be written down and for record purposes carried in these accounts at a nominal value. If not thus written down, they shall be included in account 28, "Other deferred debits", at book cost or nominal value or written off, as may be appropriate, but they shall not be so included at book cost unless there is a reasonable prospect of future substantial value.

(B) The difference between the amount of any item charged off and such nominal value shall be accounted for as provided in the text of account 415, "Miscellaneous income charges", and account 314, "Miscellaneous debits", or included in the appropriate operating-revenue or expense accounts.

23. BOOK VALUE OF SECURITIES OWNED.—(A) This system of accounts requires that the securities of others shall be recorded at the current money value, at time of acquisition, of the consideration given therefor by the carrier. The book value of such securities shall be adjusted to cover the proportion of premiums paid or discount realized which are extinguished through income.

(B) The carrier is allowed the option of writing down such book cost in recognition of depreciation in the value of the securities. If there is not a reasonable prospect of future substantial value in securities held, they should be written down to a nominal amount or written off. The amount of such adjustment shall be debited to account 314, "Miscellaneous debits." The carrier shall maintain a complete record of the facts on which it bases such adjustment.

24. COMPANY SECURITIES OWNED.—(A) The book value (note instruction 2-D) of nominally issued (note instruction 2-Q) and nominally outstanding (note instruction 2-R) stocks and funded debt securities issued or assumed by the carrier shall be shown in the short columns only of the balance-sheet statement of the carrier to this Commission. Such securities having a par value shall be so shown at their par value and for stocks having no par value there shall be shown the number of shares and any nominal value assigned thereto.

(B) The necessary adjustments of the difference between book liability for securities reacquired and the amounts actually paid for them shall be included
548 when a debit, in account 314, "Miscellaneous debits", and when a credit in account 304, "Miscellaneous credits."

25. INCOME FROM SINKING, INSURANCE, AND OTHER RESERVE FUNDS.—When interest and other income arising from reserve funds (note account 407, "Income from insurance and other reserve funds") are required by the mortgage or other provisions to be held in the funds, such income shall be charged as appropriate to account 4, "Sinking funds", or account 22, "Insurance and other funds." If such funds are represented by a reserve established through reservations of income or surplus, amounts so set aside shall be charged to account 420, "Miscellaneous reservations of income", or account 315, "Miscellaneous reservations of surplus", as may be appropriate, and credited to account 81, "Miscellaneous reserves."

26. DISCOUNT AND PREMIUM ON CAPITAL STOCK.—(A) All discounts suffered and premiums realized at the sale, resale, or exchange of each particular class of par stock issued or assumed by the carrier shall be included in a separate discount and premium account. (Note instructions 2-M and 2-X.)

(B) Surplus appropriated to extinguish all or any part of the debit balance in any premium and discount on capital-stock account shall be charged to account 316, "Stock discount extinguished through surplus", and credited to the appropriate premium and discount accounts. Similar appropriations of income shall be included in account 421, "Stock discount extinguished through income."

(C) In case the carrier is permitted and elects to distribute all or any part of the credit balance in any particular discount and premium account to its stockholders, the amount thus distributed shall be charged to that account.

(D) Except as provided in paragraphs (B), (C), and (G), balances in these accounts shall be carried until the reacquirement of the securities to which they relate, at which time the pro rata proportion (based on the relation of the amount of stock reacquired to the total amount outstanding before its reacquirement) of the balance in the account for the particular class of stock reacquired shall be closed to account 304, "Miscellaneous credits", or account 314, "Miscellaneous debits", as may be appropriate.

(E) In no case shall discount on capital stock be charged to or included in any account as a part of the cost of acquiring any property, or as a part of the cost of operation.

(F) If the net of the balances in the discount and premium accounts for all classes of capital stock outstanding is

a debit balance, the amount shall be included in the balance sheet in account 25, "Discount on capital stock", and, if a credit balance, the amount shall be included in account 53, "Premium on capital stock."

(G) Assessments against stockholders shall be credited to the discount and premium account of the particular class of capital stock so assessed, except that assessments with respect to nonpar stock shall be credited to account 51, "Capital stock."

27. DISCOUNT, PREMIUM, AND EXPENSE ON FUNDED DEBT.—(A) All discounts suffered, premiums realized, and expense incurred at the sale, resale, or exchange of each particular class of funded debt issued or assumed by the carrier shall be included in a separate discount, premium, and expense on funded-debt account. (Note instructions 2-I, 2-M, and 2-X.)

(B) The carrier is allowed the option of extinguishing at any time through charges to account 314, "Miscellaneous debits", all or any part of the debit balance remaining in any particular discount, premium, and expense ac-
549 count, provided that the amount thus charged to account 314 shall not be in excess of the credit balance in account 82, "Unappropriated surplus."

(C) Each month or other accounting period there shall be credited to each particular discount, premium, and expense on funded-debt account in which there is a debit balance, the proportion (based upon the ratio of the period to the life of the security remaining at the beginning of each such accounting period) of the debit balance in the accounts as is applicable to the period. The amounts thus credited shall be concurrently charged to account 418, "Amortization of discount on funded debt." (See also instruction 36-K-2.) Correspondingly each month or other accounting period there shall be charged to each account in which there is a credit balance the proportion of each of the credit balances therein as is applicable to the period. The amounts thus charged shall be concurrently credited to account 408, "Release of premium on funded debt." (See also instruction 36-K-2.)

(D) Except as provided in instruction 36-K-2 no part of the balance in any account for discount, premium, and expense on funded debt shall be included in any account as a part of the cost of acquiring any property or part of the cost of operation.

(E) Except as provided in the foregoing sections of this instruction the balance in each of these accounts shall be car-

ried until the reacquirement of the securities to which they relate, at which time the proportion (based on the relation of the amount of funded debt reacquired to the actual outstanding before its reacquirement) of the balance in the discount, premium, and expense account for the particular class of funded debt reacquired shall be closed to account 304, "Miscellaneous credits", or account 314, "Miscellaneous debits", as may be appropriate.

(F) If the net of the balances in the discount, premium, and expense accounts for all classes of funded debt outstanding is a debit balance, the amount shall be included in the balance sheet in account 26, "Discount on funded debt", and if a credit balance the amount shall be included in account 71, "Premium on funded debt."

28. CONVERSION OF SECURITIES.—Before recording journal entries which it is proposed to spread upon the carrier's books to record the reacquirement of capital stock or funded debt securities issued or assumed by the carrier through issuance in exchange therefor of either the carrier's capital stock or funded debt securities they shall be presented to this Commission for consideration. The text of such entries shall give complete information concerning the plan of exchange; the authority of the regulatory body with respect thereto, if any; and shall show the basis upon which the amounts in the entries have been determined.

29. CONTINGENT ASSETS AND LIABILITIES.—(A) Contingent assets and liabilities shall not be included in the body of the balance-sheet statement. Contingent assets represent possible sources of value to the carrier contingent upon the fulfillment of conditions regarded as uncertain. Contingent liabilities include items which may, under certain conditions, become obligations, of the carrier, but are neither direct nor assumed obligations on the date of the balance sheet.

(B) Contingent assets and liabilities shall be shown in detail in a supplementary statement accompanying the balance sheet.

CARRIER-PROPERTY ACCOUNTS

31. PURPOSE OF CARRIER-PROPERTY ACCOUNTS.—(A) The carrier-property accounts (101 to 192, inclusive) are designed to show the book costs of carrier property owned by the carrier.

550 (B) The balances to be stated in these accounts as of January 1, 1935, shall be as provided in instruction 32. Subsequent entries in these accounts shall be as provided in instructions 33 to 38, inclusive.

(C) For the purpose of these accounts the classification of property as between carrier and noncarrier shall be consistent with the classification of property for valuation purposes.

32. STATEMENT OF CARRIER-PROPERTY ACCOUNTS.—(A) For accounting analysis purposes on and after January 1, 1935, the property in service on that date shall be classified in accordance with the texts of the primary carrier-property accounts. The costs of the property as stated in the accounts prior to that date shall be included at the book cost thereof in these accounts.

(B) As of January 1, 1935, there shall be included in primary account 191, "Construction work in progress", the expenditures for construction projects uncompleted as of that date.

(C) The difference, if any, between the total of the amounts included in the primary accounts under sections (A) and (B), and the amount of the carrier's investment as of December 31, 1934, as shown in account 1, "Investment in carrier property", shall be included in account 192, "Unadjusted investments."

NOTE.—In the assignment (provided in the foregoing) of the book cost of property to the primary accounts there shall be included an equitable proportion of the cost of engineering and interest during construction relating to each class of property.

33. BASIS OF CHARGES.—Except as provided in the foregoing instructions the costs includible in account 1, "Investment in carrier property", shall be money costs to the carrier. When the consideration for the acquisition of carrier property is other than cash the value of such consideration shall be determined on a current cash basis. The carrier shall be prepared to furnish this Commission the particulars of its determination of the acutal cash value of the consideration, if other than money.

34. PIPE-LINE OPERATING PROPERTY PURCHASED.—(A) When property in use in pipe-line service (note instruction 2-W) is purchased the accounting therefor shall be as follows:

(B) There shall be charged at the date of purchase to the appropriate investment in carrier-property accounts the money cost to the accounting carrier (estimated if not known) of the property acquired, except that in no case shall the charges to accounts 1 to 191, inclusive, exceed the original cost (see instruction 2-V) of the property when first devoted to transportation service.

(C) To the extent that the purchase price of the property exceeds the total amount includible in the primary accounts as provided in the foregoing the amount of such excess shall be included in account 192, "Unadjusted investment."

(D) Upon application by the carrier in each instance to this Commission and subject to its approval, the carrier may charge to the carrier-property accounts and may also credit to the depreciation and amortization reserve accounts the amounts carried in those accounts by the vendor company with respect to the property purchased.

(E) Tentative journal entries recording the purchase of operating pipe-line property at a cost in excess of $25,000 shall be presented to this Commission for consideration and approval. The text of such entries shall give a complete description of the property purchased and the bases upon which the amounts of the entries have been determined.

35. ITEMS TO BE CHARGED.—To these accounts shall be charged the cost of all carrier property acquired, including property purchased, property constructed by or for the carrier (including units of property replacing property retired), improvements to the existing property, and all property transferred from noncarrier to carrier use.

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NOTE.—The cost of hand tools or other individual items of short life and small value (i. e., the cost of each is less than $25), when not acquired under a general plan, shall be charged to operating expenses, if, in the judgment of the carrier, the acquisition of the property does not affect the condition and value of its property for valuation or depreciation purposes. The carrier is permitted to adopt for the purpose of its accounting a limit of less than aforesaid $25, provided it first files with this Commission the maximum amount which it proposes to adopt and makes no subsequent change in this amount except by authority of this Commission.

36. COST OF CONSTRUCTION.—The cost of the construction of property chargeable to the carrier-property primary accounts shall include the cost of labor, material and supplies, special machine service, transportation, contract work, protection, injuries and damages, cost of privileges and permits, taxes, rent, interest during construction, and other analogous elements in connection with such work, including costs for preliminary work such as sinking test holes or making soundings for buildings and other structures. (See also instruction 31-C.)

The several items of cost here referred to are defined as follows:

(A) "Cost of labor" includes the amount paid for labor performed by the carrier's own employees. The salaries

and expenses of engineers and other officers specifically assigned to construction work shall be included in the accounts appropriate for the cost of the property in connection with which their services are rendered. No charge shall be made to these accounts for the pay of operating officers and members of their staffs who merely render service incidentally in connection with construction work.

NOTE.—The office and traveling and other personal expenses of officers and employees shall be included in the accounts to which their pay is chargeable, except that traveling and incidental expenses incurred by operating officers and members of their staffs while rendering service incidentally in connection with construction work shall be included in the cost of the work upon which they are incidentally engaged.

(B) "Cost of material and supplies", including small tools, includes the purchase price at the point of free delivery, plus the costs of inspection and loading borne by the carrier, also a suitable proportion of store expenses; it includes also freight charges paid other carriers. In calculating the cost of material used, proper allowance shall be made for the value of unused portions and other salvage; for the value of the material recovered from temporary scaffolding, cofferdams, and other temporary structures used in construction; and for the value of small tools recovered and used for other purposes.

(C) "Special machine service" includes:

(1) The cost of labor expended and materials and supplies consumed in operating vehicles, steam shovels, ditching machines, pile drivers, and other machines used in construction work.

(2) The cost of repairs to such machines incident to construction work.

(3) Rent paid for the use of machines of others. A fair rent to cover the depreciation of the carrier's own machines—the rent thus charged to be concurrently credited to account 503, 553, "Rent revenues."

(4) When machines are purchased primarily for a construction project their cost shall be charged to account 191, "Construction work in progress." Upon completion of the construction project account 191, "Construction work in progress", shall be credited with the amount received for the machines if sold or the appraised value thereof if retained for operation in the carrier's service. This appraised value shall be included in the proper carrier-property accounts. The difference between the
552 amount charged to account 191, "Construction work in progress", and the credit thereto as above indi-

cated, shall be charged to the carrier-property accounts appropriate according to the use of the machines in construction service.

NOTE.—The cost of repairs of vehicles and other work equipment and of machine tools and machinery which are used both in construction and maintenance work shall be apportioned equitably to the work in connection with which the equipment is used. (See text of clearing accounts 801 and 804.)

(D) "Cost of transportation" includes the amounts paid to other companies or individuals for the transportation of men, material and supplies, special machine outfits, appliances, and tools in connection with construction and also the cost of teaming work done by the carrier's own forces and facilities. The cost of the transportation of construction material to the point where material is received by the carrier shall be included, so far as practicable, as a part of the cost of such material.

(E) "Cost of contract work" includes amounts paid for construction work performed under contract by other companies, firms, or individuals, and costs incident to the award of the contract.

(F) "Cost of protection" includes expenditures for protection in connection with construction.

(1) From casualties, including the cost of protection against fire, payments for discovery or extinguishment of fires, cost of detecting incendiaries, witness fees in relation thereto, amounts paid to municipal corporations and others for fire protection, and analogous items.

(2) From damages to others, in protecting their property from damage through the processes of construction work, and analogous items.

(G) "Cost of injuries and damages" includes expenditures on account of injuries to persons or damage to property when incident to construction projects, and shall be included in the cost of the work in connection with which the injury or damage occurs. It also includes that portion of premiums paid for insuring property applicable to the period prior to the completion or coming into service of the property insured. Insurance recovered on account of compensation paid for injuries to persons incident to construction shall be credited to the accounts to which such compensation is charged, and insurance recovered on account of damages to property incident to construction shall be credited to the accounts chargeable with the expenditures necessary for restoring the damaged property. The cost of injuries and damages in connection with the removal of old structures which are encumbrances on newly acquired lands shall be included in account 101, 151, 171, "Land."

(H) "Cost of privileges and permits" includes compensation for temporary privileges, such as the use of private or public property or of streets, in connection with the construction of the property of the carrier.

(I) "Taxes" includes taxes on physical property during construction and before the facilities are completed ready for service. This includes taxes on land held under a definite plan for its use in pipe-line service for the period prior to the completion of pipe-line facilities thereon and other taxes separately assessed on property during construction, or assessed under conditions which permit separate identification or allocation of the amount chargeable to construction.

(J) "Rent" includes payments for use of facilities, such as motor vehicles, special tools or machines, and quarters used in construction work.

(K) "Interest during construction" includes the amounts of interest incurred in the acquisition of carrier property. Such interest shall be charged to the accounts appropriate for the cost of the property in connection with acquirement of which the interest is incurred.

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The interest includible in these accounts under this instruction is:

(1) Interest on bonds, notes, and other evidences of indebtedness sold, and upon any interest-bearing debt incurred for the acquisition of carrier property. It includes the interest accruing on the part of the debt representing the cost of carrier property acquired (less interest, if any, allowed by depositories on unexpended balances) after such funds become available for use and before the receipt or the completion or coming into service of the property so acquired.

There shall be deducted from such interest charges a proportion of premium on securities sold. The amount of premium thus deductible shall be determined by the ratio which the period between the date the proceeds from the securities issued become available and the receipt, completion, or coming into service of the property bears to the entire life of the securities issued. Interest on bonds, notes, or other evidences of indebtedness accruing before the proceeds from the sale of the securities become available for use shall not be included in these accounts nor shall there be included any interest accruing after the property (with respect to which the proceeds are expended) is received or becomes available for use in con-

nection with pipe-line service. For definition of securities actually issued, note instruction 2-A.

(2) The proportion of discount (note instruction 2-M) and expense (note instruction 2-I) on funded debt issued for the acquisition or construction of carrier property. The amount of discount and expense thus chargeable shall be determined by the ratio which the period between the date the proceeds from the securities issued become available and the receipt, completion, or coming into service of the property bears to the entire life of the securities issued. In no case, except as provided in this paragraph, shall discounts on securities be included in these accounts.

(3) Reasonable charges for interest during the construction period before the receipt, completion, or coming into service of the property acquired, on the carrier's own funds expended for the acquisition of property. The provision for accrual of interest on the carrier's own funds expended for construction purposes does not apply to property changes the cost of which is less than $5,000 nor to projects which are under construction for periods of 9 months or less. Interest on the carrier's own funds charged to investment under the provision of this instruction, including the funds secured from sale of capital stock, shall be credited to account 406, "Interest income."

NOTE.—This provision is for the purpose of accruing to the carrier, by including in the cost of physical property acquired, a return upon funds owned by it in excess of its normal working-fund requirements of its pipe-line service.

(4) On expenditures made for a construction project that has been suspended, no interest charges for a longer period than 1 year from the date of its suspension shall be included in these accounts unless specifically authorized by this Commission. No such interest shall be included in these accounts on expenditures for construction projects which have been definitely abandoned.

(L) The cost of disposing of material excavated, including the privilege of wasting in connection with construction, shall be considered as a part of the cost of the work, except that when such material is used for filling, the cost of loading, hauling, and dumping shall be equitably apportioned between the work in connection with which the material is removed and that for which it is used.

554 37. UNITS OF CARRIER PROPERTY.—The "units of property" established at the date of issuance of this system of accounts are listed in appendix A and additions to or revisions of this list will be issued, when necessary,

by this Commission, to which any applications for such additions or revisions shall be presented by the carrier.

38. RETIREMENTS AND REPLACEMENTS.—(A) To accounts 101 and 186 inclusive, shall be credited at the time of retirement (note instruction 2-II) the book cost (note instruction 2-D) of carrier property retired as follows:

(1) Land retired including the proportional cost of public improvements pertaining to the land.

(2) Units of depreciable carrier property retired (see also instruction 37 and appendix A).

(3) Minor items of depreciable carrier property retired and not replaced or replaced with other parts of a different type or design than those which are retired rendering the property more or less durable or of greater or less capacity. (See appendix A and note to account 602, 652, 752, "Repairs of pipe lines.")

NOTE.—If the book cost of units and minor items of property retired cannot be definitely determined from the carrier's records, the book cost of such units and minor items shall be estimated. Average prices may be used in estimating the book cost when it is impractical, because of the relatively large number and small size of items, to otherwise determine the book cost of such items.

(B) The amounts thus credited to these accounts (101 to 186, inclusive) shall concurrently be charged as follows:

(1) *Value of salvage.*—The value of the salvage (see instruction 2-JJ) from the retired property shall be charged to account 17, "Material and supplies", or other accounts appropriate according to the disposition made thereof. In case retired property is held without being torn down the estimated value of the salvage therefrom (see also account 17, "Material and supplies") less the estimated cost of salvaging shall be included in account 28, "Other deferred debits", until the salvage is recovered.

(2) Service value of depreciable property (note instruction 2-CC).

(a) *Units of property.*—The service value shall be charged to account 74, "Accrued depreciation—Carrier property."

(b) *Minor items.*—There shall be charged to account 74, "Accrued depreciation—Carrier property", the service value of any minor item which is retired and not replaced or if replaced with an item of different type or design or constructed of a different grade of material rendering the part applied more or less durable or of

greater or less capacity than the item retired. (See note to account 602, 652, 752, "Repairs of pipe lines.")

NOTE.—In case a minor item of property is retired and replaced with an item of different type or design, the cost of the replacement shall be charged to operating expenses if the retirement is not under a general plan, the cost involved is small, and in the judgment of the carrier the retirement and replacement does not affect the condition and value of its property for valuation or depreciation purposes.

(3) *Land.*—If the land is sold the difference between the book cost (including the proportionate cost of assessments for public improvements) and the sale price of the land, shall be debited to account 312, "Debits from retired carrier property", or credited to account 302, "Credits from retired carrier property", as may be appropriate. If the land is retained by the carrier, the aforesaid book cost and proportionate cost of assessments shall be charged to account 5, "Miscellaneous physical property."

(C) *The cost of removal.*—The cost of tearing down retired property (including the cost of removing foun-
555 dations and filling excavations of structures removed) and recovering the salvage shall be charged to account 74, "Accrued depreciation—Carrier property", except that the current cost of removing and replacing line pipe and fittings in maintenance shall be included in accounts 602, 652, 752, "Repairs of pipe lines", and 603, 653, 753, "Changing of line construction." (Note instruction 8-C.)

(D) *Property installed.*—The cost of carrier property installed in lieu of carrier property accounted for as retired, under the foregoing sections of this instruction, shall be charged to the appropriate carrier-property account.

SURPLUS ACCOUNTS

41. PURPOSE OF SURPLUS ACCOUNTS.—The surplus accounts (301 to 317, inclusive) are designed to show the changes in the surplus during each calendar year as affected by the operations and the business transactions during that period, by any disposition of surplus made solely at the option of the carrier, by adjustment of matters not properly attributable to the period, and by miscellaneous gains or losses not provided for elsewhere here; and also to show the unappropriated surplus of the carrier at the date of the balance sheet.

Income Accounts

51. Purpose of Income Accounts.—The income accounts (401 to 422, inclusive) are designed to show, as nearly as practicable, for each fiscal period, the amount of money that a carrier becomes entitled to receive for services rendered, the returns accrued upon investments, the accrued costs paid or payable for the services rendered by it, the losses sustained by it, the amounts accrued for taxes, for use of moneys, and for use of properties of others, and reservations and appropriations of income during the period.

52. Statement of Income Accounts.—The accounting for income shall be, as nearly as practicable, coincident with the transactions or the occurrences which create them. If, for the purpose of meeting this requirement, the carrier accounts for unaudited income upon an accrual basis, it shall file with this Commission a comprehensive statement indicating the particulars of its plan of accrual. It shall also file with this Commission any revision made in its plan of accounting for accruals.

Operating-Revenue Accounts

61. Purpose of Operating-Revenue Accounts.—The operating-revenue accounts (501 to 554, inclusive) are designed to show the revenues from the carrier's pipe-line operations, and service incidental to such service classified as between "Gathering lines" and "Trunk lines."

62. Statement of Operating-Revenue Accounts.—(A) The accounting for operating revenues shall as nearly as practicable be coincident with the transactions which create them. If, for the purpose of meeting this requirement, the carrier accounts for unaudited revenues upon an accrual basis, it shall file with this Commission a comprehensive statement indicating the particulars of its plan of accruals, including in these particulars a description of the variations in the general plan made to meet seasonal changes occurring in traffic. It shall also furnish an explanation of its plan of adjusting accrual estimates to the actual revenue earned. It shall also file with this Commission any revision made in its plan of accounting for accruals. If, during any calendar year, due to exceptional traffic conditions, the carrier finds a modification of its general plan becomes temporarily necessary in accruing certain unaudited revenue, it shall furnish a statement to this Commission of such temporary modification. Revenues thus accrued shall

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be included in account 78, "Other deferred credits", or account 28, "Other deferred debits", as may be appropriate.

(B) The revenue accounts shall not be used as clearing accounts for other carriers' proportions of revenue, except that overcharges discovered after the revenue has been audited may be carried in these accounts until adjusted.

63. MISCELLANEOUS OPERATIONS.—The revenue from miscellaneous operations shall be included in account 403, "Income from miscellaneous operating physical property", when the facilities used are distinct from those used by the carrier in pipe-line service or in the maintenance of facilities used in such service and the operations are not incidental thereto. (See also account 403.)

OPERATING-EXPENSE ACCOUNTS

71. PURPOSE OF OPERATING-EXPENSE ACCOUNTS.—The operating-expense accounts (601 to 691, inclusive) are designed to show expenses of the carrier in furnishing pipeline service, including the expenses of maintenance (repairs and depreciation) of the property used in such service. General clearing accounts 751 to 791 are designed to facilitate the distribution to the appropriate gathering-line and trunk-line primary accounts of expenses of a general character. These distributions shall be upon the basis of factors deemed by the carrier to be equitable. The carrier shall maintain in its records the details of these general clearing accounts and the bases upon which the charges to them have been cleared therefrom.

72. STATEMENT OF OPERATING-EXPENSE ACCOUNTS.—The accounting for operating expenses shall, as nearly as practicable, be coincident with the transactions which create them. If, for the purpose of meeting this requirement, the carrier accounts for other than specific items under the provisions of instruction 3, such as charges for loss and damage, injuries to persons, and other expenses upon an accrual basis, it shall file with this Commission a comprehensive statement indicating the particulars of its plan of accruals. It shall also file with this Commission any revision made in its plan of accounting for such accruals. It shall furnish an explanation of its plan of adjusting accrual estimates to actual expenses incurred.

73. MISCELLANEOUS OPERATIONS.—The expenses of miscellaneous operations involving the use of such facilities as hotels and restaurants, ice-supply plants, etc., shall be in-

cluded in account 403, "Income from miscellaneous operating physical property", when the facilities used are distinct from those used by the carrier in pipe-line service or in the maintenance of facilities used in such service, if the operations are not incident thereto. (See also account 403.)

74. MAINTENANCE EXPENSES.—The accounts provided for maintenance are designed to show the cost of repairs and also the loss resulting from ordinary wear and tear of service, exposure to the elements, inadequacy, obsolescence, or other depreciation. They shall include the cost of clearing, mowing, and beautifying grounds pertaining to buildings; of maintaining sidewalks and driveways within the grounds or structures; of the periodical restoration of seasonal features such as gardens, shrubbery, and lawns; of restoring sidewalks, driveways, lawns, etc., in grounds after property changes; and of clearing and removing casual encumbrances such as ice and snow.

NOTE.—Cleaning station buildings and maintaining grounds, when incidentally done by station employees, is provided for in account 623, 673, "Operation of pumping stations."

557 75. COST OF REPAIRS.—(A) The cost of all repairs of carrier property shall be included in the appropriate repair accounts of this classification.

(B) The cost of repairs shall include the following:

(1) Inspection, including service tests to ascertain the condition of property and to determine any repairs necessary; of adjusting, reconditioning, including the replacement in kind of minor items of carrier property (note instruction 2-P) such as repairing buildings and other structures; of inspecting and testing after repairs have been made to determine whether the repairs have been properly made; of incidental work, such as the construction or removal of false work; and the cost of relocating pipe-line plant when retirement accounting for units of property is not involved. (Note instruction 38).

(2) The cost of labor, material and supplies, teaming, special machine service, contract work, privileges, protection from casualties, and other analogous items of expense connected with the maintenance of carrier property.

(C) The several items of cost here referred to are defined as follows:

(1) Cost of labor includes the amount paid for labor performed by the carrier's own employees. When officers or members of their staffs are especially assigned to construction work, their pay while thus engaged shall be in-

cluded in the cost of the construction work. No charge shall be made against the carrier-property accounts for the pay of operating officers and members of their staffs who merely render service incidentally in connection with property changes.

(2) Cost of materials and supplies, including small tools, is the purchase price at the point of free delivery plus the cost of inspection and loading borne by the carrier; it also includes transportation charges up to the point the material is received by the carrier which are paid to others. In calculating the cost of materials used, proper allowance shall be made for the value of unused portions and other salvage.

NOTE A.—The office and traveling and other expenses of officers and employees shall be included in the accounts to which their pay is chargeable, except that traveling and incidental expenses incurred by operating officers and members of their staffs while rendering service incidentally in connection with property changes shall be included in the cost of the work upon which they are incidentally engaged.

NOTE B.—There shall be credited to these accounts the value, at current prices, of material recovered (less a suitable allowance for its second-hand condition) from property repaired and from scaffolding, cofferdams, and other temporary structures used in repair work.

(3) Cost of special machine service includes the cost of labor expended and material and supplies consumed in operating steam shovels, ditching machines, pile drivers, dredges, scrapers, and other labor-saving machines.

(4) Contract work includes amount paid for work performed under contract by other companies, firms, or individuals and costs incident to the awarding of the contract.

(5) Cost of privileges includes amount paid for special temporary privileges such as for the use of private or public property or of streets in connection with repairs of the property of the carrier.

(6) Cost of protections from casualties includes expenditures for protection against fire, flood, etc., such as payments for discovery or extinguishment of fires, payments to others for reporting leaks in pipe lines, cost of detecting and prosecuting incendiaries, witness fees in relation to such protection, amounts paid to municipal corporations and others for fire protection, protecting property against damages by floods, and analogous
558 items. It does not include insurance premiums paid to assure reimbursement for prospective losses of carrier property. Such premiums are chargeable to account 638, 688, 788, "Insurance."

76. Royalties on Appliances.—The royalties or other expenses for patent rights on appliances used in operation shall be included in the appropriate operating-expense accounts.

77. Distribution of Pay and Expenses of Employees.—(A) Charges to the carrier-property and operating-expense accounts for services and expenses of employees engaged both in construction and operation shall be based upon the actual time engaged in the respective classes of work.

(B) The pay and expenses of an employee who performs the same class of work from day to day may be distributed upon the basis of a study of the time actually engaged in a representative period.

Note.—The pay and expense of an employee of one department who performs incidental services involving but small expense for another department shall be included in the expenses of the department in which the employee is regularly employed.

78. Deferring Charges to Operating Expenses.—When an item of operating expenses incurred is so large that if included in the accounts for a single month it would distort the accounts for that month, the carrier has the option of charging the item to account 28, "Other deferred debits", and spreading it in equal amounts in the current and remaining months of the calendar year. No such item shall be spread beyond the accounts of the current year without specific authority of this Commission.

79. Equalization of Expenses.—For the purpose of equalizing the monthly charges for the repairs of carrier property the carrier may include each month in the appropriate primary repair accounts a uniform proportion of the amount of authorized estimates of such expenses for the calendar year. In a like manner the authorized estimates of expenses on account of personal injury, damages to property, and the other claims may be equalized in the monthly accounts of the calendar year.

Clearing Accounts

91. Purpose of Clearing Accounts.—The clearing accounts (801 to 804, inclusive) are designed to facilitate the distribution of certain items which usually affect more than one class of accounts. (See instruction 71, relating to operating-expense general clearing accounts.) Any such items which can properly be allocated to the appropriate primary accounts as they are incurred may be charged direct to those accounts.

559 BALANCE-SHEET ACCOUNTS

This classified balance sheet is designed to show the financial condition of the carrier as of the date for which it is drawn.

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560 LIABILITY SIDE

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561 TEXT PERTAINING TO BALANCE-SHEET ACCOUNTS

I. INVESTMENTS

1. INVESTMENT IN CARRIER PROPERTY.—This account shall include the cost to the carrier of physical property used in or held under a definite plan for pipe-line operations, in existence at the date of the balance-sheet statement. The carrier's records shall be so kept as to show the charges and credits to this account classified in accordance with the accounts for investment in carrier property.

NOTE A.—This account shall not include any item representing titles to securities.

NOTE B.—When any carrier property is acquired under agreement which provides that the cost shall be paid in installments, the cost (its money cost at time of purchase) shall be charged to the appropriate property-investment accounts at the time of its acquisition, and included in this account in the same manner as the cost of property purchased outright. When the par value of notes or other securities issued in payment, or in part payment, for such property is more or less than its actual cash value at the time of purchase, or of the proportion of the value to which the securities are applicable, the difference between the par value of the securities and the actual cash value of the property, or of the proportion of the value paid for by the securities, shall be charged or credited to the proper discount and premium account. (See also instructions 26 and 27.)

NOTE C.—The carrier's investment in noncarrier property shall be included in account 5, "Miscellaneous physical property."

2. COST OF ORGANIZATION.—This account shall include the cost of organizing and incorporating the company and the expense of issuing its capital stock. (See also instruction 26.)

ITEMS.

[Note instruction 6]

Amounts paid for legal services.
Amounts paid for privileges of incorporation.
Fees and taxes for original capital-stock issues.
Listing capital stock on exchanges.
Office expenses incident to organizing and preparing the company for operation.
Preparing, engraving, printing, and distributing prospectuses and certificates in connection with original and additional stock issues.
Revenue stamps on original issues of capital stock.
Special counsel and other fees and expenses in mergers, consolidations, and reorganizations.

NOTE A.—Whenever all or any portion of an issue of capital stock is retired, the proportionate part of the amounts included in this account for expenses incurred in connection with such issue shall be retired.

NOTE B.—When charges are made to this account for expenses incurred in mergers, consolidations, or reorganization, amounts previously included herein on the books of the various companies concerned should not be carried over unless it is clear that such items involve no duplication when added to the new charges made or to be made.

3. OPERATING OIL SUPPLY.—This account shall include the cost of oil owned by the carrier and used to maintain lines and storage tanks in condition for the transportation of commercial oil.

4. SINKING FUNDS.—(A) This account shall include the amount of cash, the book cost of securities issued by other companies, and the par value of nominally issued and nominally outstanding (note instructions 2-Q-R) securities issued or assumed by the carrier; and other assets which are held by trustees or by the carrier's treasurer in a distinct fund for the purpose of redeeming outstanding obligations. (See also instructions 23, 24, and 25.)

562 (B) A separate account should be kept for each sinking fund under a title which shall designate the obligation in support of which the fund was created.

5. MISCELLANEOUS PHYSICAL PROPERTY.—This account shall include the carrier's investment in physical property other than carrier property assignable to account 1, "Investment in carrier property", including hotels, restaurants, commercial power plants, etc., which are entirely distinct from carrier property and are not operated in connection with pipe-line service of the carrier.

ITEMS

[Note instruction 6]

Commercial power plants.
Hotels and restaurants.
Lands and buildings not used in pipe-line service.
Lands and property acquired and held in anticipation of an indefinite future use.
Mineral and timber lands.
Pipe-line material leased to others under long-term lease.
Manufacturing plants, not in connection with pipe-line service.

6. INVESTMENTS IN AFFILIATED COMPANIES.—(A) This account shall include the book value (note instruction 2-D) of the carrier's investment advances to affiliated companies, also of its investment in securities issued or assumed by such companies, such securities not being held in special deposits or in special funds. (Note instruction 2-C.)

(B) This account shall be subdivided:

(1) Stocks.
(2) Bonds.

(3) Notes, including herein not only notes that run longer than 2 years and all notes of affiliated companies held as investments but also notes payable on demand or within 2 years from the date of issue when it is mutually understood and intended that the notes shall not be enforced as current assets.

(4) Advances.

(C) The carrier's records shall be kept in such manner that the book value of securities pledged as collateral security for any of the carrier's funded debt or short-term loans and the ledger value of securities unpledged may be shown separately in the annual report to this Commission.

NOTE A.—Accounts with affiliated companies which are subject to current settlements, such as charges for material and supplies currently furnished, charges for repairs to equipment, etc., shall be classed as current assets or current liabilities, as may be appropriate.

NOTE B.—The value of securities borrowed by the carrier and pledged shall not be included in this account.

NOTE C.—The book value of securities pledged for purposes other than that of security for funded debt or short-term loans shall be included in account 12, "Special deposits" (when for 2 years or less), or 22, "Insurance and other funds", as may be appropriate.

7. OTHER INVESTMENTS.—(A) This account shall include the book value of carrier's investment in securities issued or assumed by nonaffiliated companies (note instruction 2-S) and individuals other than securities held in special funds (see note C to this account), also its investment advances to such parties and special deposits of cash for more than 2 years from date of deposit.

(B) This account shall be subdivided:

(1) Stocks.

(2) Bonds.

563 (3) Notes, including herein not only notes that run longer than 2 years and all notes of nonaffiliated companies and of individuals held as investments, but also notes payable on demand or within 2 years from date of issue when it is mutually understood and intended that the notes shall not be enforced as current assets.

(4) Advances.

(5) Miscellaneous (including "special deposits" for more than 2 years from date of deposit).

(C) The carrier's records shall be kept in such manner that the ledger value of securities pledged as collateral security for any of the carrier's funded debt or short-term loans and the book value of securities unpledged may be shown separately in the annual report to this Commission.

NOTE A.—Accounts with nonaffiliated companies which are subject to current settlements, such as charges for material and supplies currently furnished, charges for repairs to equipment, etc., shall be classed as current assets or current liabilities, as may be appropriate.

NOTE B.—The value of securities borrowed by the carrier and pledged shall not be included in this account.

NOTE C.—The book value of securities pledged for purposes other than of security for funded debt or short-term loans shall be included in account 12, "Special deposits" (when for 2 years or less), or 22, "Insurance and other funds", as may be appropriate.

NOTE D.—Working-fund advances to nonaffiliated companies other than those for investment shall be included in account 21, "Working-fund advances."

8. COMPANY SECURITIES OWNED.—(A) This account shall include the book value of nominally issued and nominally outstanding (note instructions 2-Q-R) securities issued or assumed by the carrier, other than such securities held in insurance or other special funds. (Note instruction 24.)

(B) This account shall be maintained to show:

(1) For stock:

(a) Par stock:

(1) Number of shares and total par value of shares unpledged.

(2) Number of shares and total par value of shares pledged.

(b) Nonpar stock:

(1) Number of shares and any nominal value of shares unpledged.

(2) Number of shares and any nominal value of shares pledged.

(2) For funded debt:

(a) Total par value unpledged.

(b) Total par value pledged.

II. CURRENT ASSETS

9. CASH.—(A) To this account shall be charged all cash received and to it shall be credited all cash actually paid out. The term "cash" includes metallic money, bank bills, legal tender, notes, checks, or other representatives of money.

(B) This account shall be so kept as to include in the balance of the account the actual amount in the carrier's general cash fund including the amounts held in its treasury, amounts deposited with banks and trust companies subject to check, and cash in transit from agents.

10. DEMAND LOANS AND DEPOSITS.—This account shall include the amount of demand loans fully secured by stocks,

bonds, and other marketable collateral, and of deposits with banks and trust companies when such items are subject to collection on demand. (See also instruction 22.)

564 11. TIME DRAFTS AND DEPOSITS.—This account shall include the amount of time drafts receivable and time deposits with banks and trust companies. (See also instruction 22.)

12. SPECIAL DEPOSITS.—This account shall include funds specially deposited (other than in sinking funds or deposits under mortgage provisions) for payment of dividends, interest, and other debts, when such payments are due 2 years or less from the date of deposit; also money and securities deposited to insure the performance of contracts to be performed within 2 years from the date of the deposit; and other deposits of a special nature not provided for elsewhere. (See also instruction 22.)

NOTE A.—Special deposits due more than 2 years from date of deposit shall be included in account 6, "Investments in affiliated companies", or 7, "Other investments."

NOTE B.—Securities pledged as collateral for the carrier's funded debt or short-term loans shall be included, in accordance with the character of the securities pledged in accounts 6, "Investments in affiliated companies"; 7, "Other investments"; or 8, "Company securities owned."

NOTE C.—The balance sheet in the annual report to this Commission shall show in the first short column the balance in this account. This balance shall be divided to show in the second short column the par value of securities issued or assumed and to show the book value of other assets in the fund in the long column. (See also instruction 24.)

13. NOTES RECEIVABLE.—This account shall include the book value of all collectible obligations in the form of demand or time loans (see note B hereunder) and other similar evidences (except interest coupons) of money receivable within a time not exceeding 2 years from date of issue. (See also instruction 22.)

NOTE A.—This account shall not include obligations any part of which shall mature more than 2 years after date of issue, obligations maturing serially any part of which matures more than 2 years after date of issue, or demand or short-term notes held as investments includible in account 6, "Investments in affiliated companies."

NOTE B.—Demand loans fully secured by stocks, bonds or other marketable collateral shall be included in account 10, "Demand loans and deposits."

14. AGENTS' BALANCES.—This account shall include the net balance due in current accounts from agents and from other employees and representatives charged with the collection or custody of current revenue. (See also instruction 22.)

NOTE.—Amounts advanced to general and special agents as working funds shall be included in account 21, "Working-fund advances."

15. REVENUE RECEIVABLE.—This account shall include the amount receivable from the transportation and storage of oil and oil products. This account shall be subdivided to show:

(a) Amount of local revenue receivable.

(b) Amount of joint revenue receivable from companies parties to joint tariffs.

16. ACCOUNTS RECEIVABLE.—This account shall include the amounts billed against other companies, firms, and individuals which are considered to be collectible. (See also instruction 22.)

NOTE.—The amounts receivable for the transportation and storage of oil and other products are includible in account 15, "Revenue receivable."

17. MATERIAL AND SUPPLIES.—(A) This account shall include the balances representing the cost, less depreciation, if any, of all unapplied material and supplies, such as shop material, articles in process of manufacture by the carrier, fuel, and pipe-line supplies. In determining the cost of material and supplies suitable allowance shall be made for all discounts allowed in the purchase thereof.

565 (B) The costs chargeable to this account are the actual cash costs of the material and supplies at the point of free delivery plus any transportation charges paid for transporting the material from that point. (See also instructions 36-B and 75-C-2.)

(C) Material recovered in connection with maintenance work or the demolishing of carrier property shall be charged to this account on the basis of its value as recovered. When scrap material is sold at a higher or lower price than that at which it is included in this account, so far as practicable, an appropriate adjustment shall be made in the accounts which were credited when the material was recovered and taken into the material and supply account.

NOTE A.—Interest paid on material bills the payments of which are delayed shall be charged to account 417, "Interest on unfunded debt."

NOTE B.—An annual inventory of material and supplies shall be taken and the necessary adjustment to bring this account into harmony with the actual inventory balances shall be made. In effecting this adjustment determined differences in accounting for important classes of material shall be equitably assigned among the accounts to which the classes of material are ordinarily chargeable. Other differences shall be equitably apportioned among the primary accounts to which material has been charged since the last inventory, except that inventory shortages on account of depreciation through obsolescence of material and supply stock shall be charged to account 73, "Operating reserves." (See also account 613, 663, 763, "Depreciation.")

NOTE C.—The carrier is permitted to include in operating expenses at the time of purchase or issue from warehouse items of material of small value, such as small hand tools, which are provided for maintenance purposes when the material is under the direct charge of the maintenance forces, if the quantity of the material is not of sufficient value to justify the expense of carrying the material under the supervision of storekeepers or warehousemen.

18. INTEREST AND DIVIDENDS RECEIVABLE.—This account shall include the amount of interest accrued to the date of the balance sheet on bonds owned and on loans made, the amount of matured dividends receivable on stocks owned, and dividends accrued on such stocks when contracts require that the dividends be paid at stated times. (See also instruction 22.)

NOTE A.—No amounts representing interest or dividends receivable shall be included in this account unless payments thereof are reasonably assured by past experience, guaranty, anticipated provisions, or otherwise.

NOTE B.—No dividends or other returns on securities issued or assumed by the carrier shall be included in this account.

19. RENTS RECEIVABLE.—This account shall include unmatured rents receivable accrued to the date of the balance sheet. It is not required that minor rents shall be accounted for upon accrual basis. (See also instruction 22.)

20. OTHER CURRENT ASSETS.—This account shall include current asset items that have not reached the stage of audited accounts and become classable in account 16, "Accounts receivable", and yet have been advanced beyond the state of accounts properly classable in general account III. Deferred Debits. It shall include items of current assets not in accounts 9 to 19, inclusive. (See also instruction 22.)

III. DEFERRED DEBITS

21. WORKING-FUND ADVANCES.—This account shall include amounts advanced to noncarrier companies, general and special agents, and to other officers and employees, as working funds from which certain expenditures are to be made and accounted for.

22. INSURANCE AND OTHER FUNDS.—This account shall include the amount of cash, the book value of securities of other companies and other assets which are in the hands of trustees or managers of insurance, employees' pension, savings, relief, hospital, and other funds which have been specifically set aside or invested for specific purposes not provided for elsewhere; also the par value of securities issued or assumed by the carrier and held in such funds. A separate account shall be kept for each fund.

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NOTE A.—The balance sheet in the annual report to this Commission shall show in the first short column the balance in this account. This balance shall be divided to show in the second short column the par value of securities issued or assumed and to show the ledger value of other assets in the fund in the long column.

NOTE B.—This account shall not include funds held by the carrier solely as trustee and in which it has no beneficial interest.

23. RENTS AND INSURANCE PREMIUMS PAID IN ADVANCE.—This account shall include the balance in the accounts representing prepaid rents chargeable to the appropriate rent accounts as the term expires for which the rents are paid; also insurance premiums paid in advance of their accrual except premiums chargeable to the carrier-property accounts and minor amounts which may be charged direct to the accounts. As the term expires for which the premiums are paid this account shall be credited at monthly intervals and the appropriate accounts charged.

24. TAXES PAID IN ADVANCE.—This account shall include amounts paid for taxes applicable to future periods chargeable to account 68, "Taxes accrued", as the periods arrive to which they are applicable.

25. DISCOUNT ON CAPITAL STOCK.—This account shall include the total of the net debit balances in the discount and premium accounts for the several subclasses of capital stock. (See also instruction 26.)

26. DISCOUNT ON FUNDED DEBT.—This account shall include the total of the net debit balances in the discount, expense, and premium accounts for the several subclasses of funded debt. (See also instruction 27.)

27. EXTRAORDINARY MAINTENANCE SUSPENSE.—(A) This account shall be charged with the service value of retired carried property which has not been provided for by depreciation reserves and which if charged to these reserves would unduly deplete them. (See also account 614, 664, "Extraordinary retirements", and instruction 8-G.)

(B) Charges shall not be included in this account until permission of this Commission has been granted. The carrier's application to this Commission for such permission shall give full particulars concerning the property retired, the amount chargeable to operating expenses, and the period over which, in its judgment, the amount of such charges should be distributed.

28. OTHER DEFERRED DEBITS.—This account shall include the amount of debit balances in suspense accounts that cannot be entirely cleared and disposed of until additional information is received, such as interest paid in advance;

debit balances in clearing accounts, such as store expenses, items credited to operating revenues, operating expenses, income, or surplus, on an estimated basis in accordance with instruction 3; unextinguished discount on short-term notes; and deferred debit items not provided for in accounts 21 to 27, inclusive, and other similar items.

IV. Stock

51. Capital Stock.—(A) This account shall include the book liability for certificates which represent permanent interests in the company or interests which if terminable, are so only at the option of the company, as follows:

(1) For actually outstanding stocks. (Note instruction 2-B.)

(a) The par value of par stock.

(b) The current money value "at time of sale" of the consideration received for nonpar stock. (See also notes A and B to this account.)

567 (c) Appropriations of undistributed surplus which have been transferred to nonpar stock account.

(2) For nominally issued, and nominally outstanding stocks. (Note instructions 2-Q-R.)

(a) The par value of par stock.

(b) Any nominal value assigned to nonpar stock.

(B) The amounts included herein shall be divided so as to show each class of stock issued, as follows:

(1) Common stock: Stocks which have no preference in distribution of dividends.

(2) Preferred stock: Stocks having preference in distribution of dividends.

(3) Debenture stock: Stocks issued under a contract to pay a specified return at specified intervals.

(C) Each of the foregoing classes shall also be divided into subclasses according to differences in dividend or interest rights, voting rights, or conditions under which the securities may be retired.

(D) To this account shall be charged at the time of retirement the book liability of all stock retired. In case capital stock of no par value has been actually issued to a bona fide holder for value and is reacquired and held alive by the carrier, this account shall be charged through credit to account 304, "Miscellaneous credits", or credited through debit to account 314, "Miscellaneous debits", with the difference between the amount of book liability resting therein for the stock reacquired and the amount paid for the stock when reacquired. For record purposes

a nominal value for the nonpar stock shall be recorded in account 8, "Company securities owned", and in this account. (See also instruction 24.)

(E) The book liability for nonpar stock reacquired shall be determined by a prorate of the proceeds realized from shares of the particular subclass of stock of which the shares reacquired are a part actually outstanding immediately prior to the acquisition plus any transfers of surplus to the particular stock reacquired. (See also account 8, "Company securities owned.")

NOTE A.—When a general levy or assessment is made against holders of par stock requiring the payment of any sum in addition to the consideration agreed upon at the time of sale, the amount collected upon such levy or assessment in connection with the stock shall be credited to the discount and premium account for the class of stock on which the assessment is made. If such levy or assessment is made against the holders of nonpar stock, the amount collected shall be credited to the liability for such stock carried in this account.

NOTE B.—No debits shall be made to this account for nonpar stock except for amounts distributed to shareholders in liquidation (which shall be charged to this account and not to surplus) and those in connection with the reacquirement of the stock.

NOTE C.—No entries shall be made in this account in connection with stock certificates which have not been lawfully authorized and authenticated.

NOTE D.—Transfers of surplus to this account for nonpar stock may only be made from unappropriated surplus.

52. LIABILITY FOR CONVERSION OF STOCK.—This account shall include the carrier's liability under agreements to exchange its capital stock for the outstanding securities of companies whose physical property has been acquired under such agreements, but whose securities have not yet been surrendered for exchange.

NOTE.—When prior to their actual conversion the securities for conversion still outstanding have been given all rights and privileges of capital stock of its own issue by regularly authorized official action of the carrier they shall be included in account 51, "Capital stock."

568 53. PREMIUM ON CAPITAL STOCK.—This account shall include the total of the net credit balances in the discount and premium accounts for the several subclasses of capital stock. (See also instruction 26.)

54. CAPITAL-STOCK INSTALLMENTS.—(A) This account shall include amounts received on account of subscriptions to capital stock under an installment plan prior to the issuance of the stock.

(B) As the total amount of each subscription is received and stock certificates are issued, the amount of the subscription shall be transferred to account 51, "Capital stock", and, as may be appropriate, to account 25, "Discount on capital stock", or 53, "Premium on capital stock."

(C) In the carrier's reports to this Commission there shall be shown in the short column of the balance sheet, the total amount of the capital stock subscriptions which have not been fully paid or canceled, and also the total amount unpaid on such subscriptions.

V. Long-Term Debt

55. Funded Debt Unmatured.—(A) This account shall include the total par value of unmatured debt, maturing more than 2 years from date of issue, issued by the carrier and not retired or canceled; and the total par value of similar unmatured debt of other companies, the payment of which has been assumed by the carrier.

(B) The amounts included in this account shall be divided so as to show the par value of:

(1) Certificates or other evidences of funded debt (pledged or unpledged) held in the carrier's treasury, by its agents or trustees, or otherwise subject to its control, including both those reacquired after actual issue and those nominally but not actually issued; and

(2) Certificates or other evidences of funded debt issued and actually outstanding, being those not held by the carrier, its agents, or trustees, or subject to its control. (See instructions 2-A-B-Q-R.)

(C) The amounts included herein shall be further divided so as to show the amount of each class of funded debt, as follows:

(1) Mortgage bonds: Bonds secured by lien on physical property and not includible in the other subdivisions of this account.

(2) Collateral trust bonds: Bonds and notes secured by a lien on securities or other negotiable paper, and stock trust certificates that are similar in character to collateral trust bonds.

(3) Income bonds: Bonds which are a lien on a carrier's revenue alone, or bonds which, while being a lien on its property and franchises, can claim payment of interest only in case interest is earned.

(4) Miscellaneous obligations: All funded obligations not provided for in other subdivisions of this account, also notes, unsecured certificates of indebtedness, debenture bonds, plain bonds, real-estate mortgages executed or assumed, and other similar obligations maturing more than 2 years after date of issue.

(5) Receipts outstanding for funded debt: Receipts for payments on account of funded debt. When certificates are issued for amounts so paid, the par value shall be included in the account covering the class of funded debt for which the certificates are issued.

569 (D) Each of the foregoing classes shall also be divided into subclasses according to differences in mortgage or other lien or security therefor, rate of interest, interest dates, or date of maturity.

NOTE A.—Securities maturing 2 years or less from date of issue shall be included in account 57, "Nonnegotiable debt to affiliated companies", or 58, "Notes payable", except that where an issue of securities maturing serially over a period of more than 2 years contains short-term obligations, such obligations shall be included as funded debt. Matured funded debt shall be included in account 64, "Funded debt matured unpaid."

NOTE B.—Nonnegotiable notes having a maturity of more than 2 years after date of issue, held by affiliated companies, shall be included in account 57, "Nonnegotiable debt to affiliated companies."

NOTE C.—In the balance sheet the total unmatured funded debt included in the account shall be shown in the first short column. The amount nominally but not actually issued and the amount nominally outstanding shall be shown in the second short column, and in the long column shall be shown the amount actually outstanding. (See also instruction 24.)

56. RECEIVERS' CERTIFICATES.—When any receiver acting under the order of the court is in possession of the property of the carrier and under the orders of such court issues evidences of indebtedness chargeable upon such property the face value of such evidences of indebtedness shall be credited to this account.

57. NONNEGOTIABLE DEBT TO AFFILIATED COMPANIES.—(A) This account shall include the par value of nonnegotiable notes issued to affiliated companies (note instruction 2-C), credit balances in open accounts with such companies (other than credit balances in current accounts classable as current liabilities), and interest accrued on notes and open accounts included in this account, when such interest is not subject to current settlement.

(B) This account shall be subdivided:

(1) Notes, including herein not only nonnegotiable notes that run longer than a term of 2 years, but also such notes payable on demand or within 2 years from the date of issue when it is mutually agreed that the notes shall not be enforced as current assets by the holder.

(2) Open accounts, including advances, not subject to current settlement.

(3) Interest accrued on amounts included in this account when not subject to current settlement.

NOTE A.—Accounts with affiliated companies which are subject to current settlement such as charges for materials and supplies currently furnished, charges for repairs to equipment, etc., shall be classed as current assets or current liabilities, as may be appropriate.

NOTE B.—No items shall be included in this account which are not known to be the property of an affiliated company.

VI. CURRENT LIABILITIES

58. NOTES PAYABLE.—(A) This account shall include the balances representing obligations outstanding in the form of notes, drafts, and other similar evidences (except interest coupons) of indebtedness payable on demand or within a time not exceeding 2 years from the date of issue.

(B) This account shall be kept in such form that the amounts of notes, secured by collateral, payable within 2 years from date of issue, may be reported separately in the carrier's annual report to this Commission.

NOTE.—This account shall not include obligations which mature more than 2 years after date of issue; obligations maturing serially, any part of which matures more than 2 years after date of issue; or demand or short-term notes issued to affiliated companies and includible in account 57, "Nonnegotiable debt to affiliated companies."

570 59. JOINT REVENUE PAYABLE.—This account shall include the revenue from the transportation of oil and oil products which is payable to companies parties to joint tariffs.

60. WAGES PAYABLE.—This account shall include the amount of audited pay rolls unpaid on the date of the balance sheet. It shall include also balances representing unclaimed wages.

61. ACCOUNTS PAYABLE.—This account shall include the amount of audited vouchers or accounts unpaid on the date of the balance sheet, outstanding drafts drawn by agents, deposits of affiliated companies subject to current settlement, and other items of the nature of demand liabilities not covered by accounts 58, "Notes payable"; 59, "Joint revenue payable"; 60, "Wages payable"; 62, "Interest matured unpaid"; 63, "Dividend matured unpaid"; and 64, "Funded debt matured unpaid."

62. INTEREST MATURED UNPAID.—(A) This account shall include the amount of matured and unpaid interest on loans and on funded debt and receivers' certificates, issued or assumed by the carrier.

(B) Interest which matures on the first day following the date of the balance sheet shall be included in this account.

NOTE.—Interest matured unpaid on nonnegotiable debt to affiliated companies, if not subject to current settlement, shall be included in account 57, "Nonnegotiable debt to affiliated companies."

63. DIVIDENDS MATURED UNPAID.—(A) This account shall include the amount of declared dividends due and payable on Capital stock but unpaid, uncalled for, or unclaimed at the date of the balance sheet.

(B) Dividends which become payable on the first business day following the date of the balance sheet shall be included in this account.

64. FUNDED DEBT MATURED UNPAID.—This account shall include the amount of funded debt and receivers' certificates matured and unpaid without any specific agreement for extension as to time of payment, including unpresented bonds drawn for redemption through the operation of sinking and redemption-fund agreements.

65. UNMATURED DIVIDENDS DECLARED.—This account shall include dividends declared on capital stock, but not payable until after the first business day following the date of the balance sheet.

66. UNMATURED INTEREST ACCRUED.—This account shall include the amount of interest on loans and on funded debt and receivers' certificates issued or assumed, accrued to the date for which the balance sheet is made, but not payable until after the first business day following that date.

67. UNMATURED RENTS ACCRUED.—This account shall include rents, under leases or other agreements, accrued to the date for which the balance sheet is made, but not payable until after the first business day following that date. It shall include also the amount of accrued dividends on stock and accrued interest on the funded debt of other companies when such dividends and interest are payable by the carrier as all or a portion of the rent under leases or other agreements with those companies.

NOTE.—Matured rents shall be included in account 69, "Other current liabilities", unless they have been vouchered and are therefore classable in account 61, "Accounts payable."

68. TAXES ACCRUED.—This account shall include the amount of unpaid taxes accrued and chargeable to accounts 412, "Pipe-line taxes"; 413, "Taxes on miscellaneous operating physical property"; 414, "Miscellaneous taxes"; and to the carrier-property accounts.

NOTE.—Taxes paid in advance of the periods to which they apply shall be carried in account 24, "Taxes paid in advance."

571 69. OTHER CURRENT LIABILITIES.—This account shall include current liability items which have not yet reached the stage of audited accounts and become

classable under accounts payable and yet have advanced beyond the stage of accounts properly classable in the primary accounts under general account VII, Deferred Credits and Reserves.

VII. Deferred Credits and Reserves

70. Liability for Provident Funds.—(A) This account shall include specific appropriations of income or surplus and the amounts contributed by employees or others (whether carried in special trust funds or in general funds of the carrier) for pensions, accident and death benefits, savings, relief, hospital, and other provident purposes, when administered by trustees or managers acting for the carrier.

(B) This account shall include also the amount accrued for pensions through charges to account 635, 685, 785, "Relief and pensions." Amounts so credited shall, when actually paid to retired employees or paid into a trust fund irrevocably devoted to the payment of pensions, be charged hereto.

71. Premium on Funded Debt.—This account shall include the total of the net credit balances in the discount, expense, and premium accounts for the several subclasses of funded debt. (See also instruction 27.)

72. Insurance Reserve.—(A) To this account shall be credited appropriations of income or surplus specifically made to cover self-carried risks for losses through accident, fire, flood, or other cause.

(B) In case the carrier elects to carry its own risks for losses through accident, fire, flood, or other cause and provides a reserve, other than provision made in the depreciation reserve, to equalize anticipated losses, the charges to account 638, 688, 788, "Insurance", and other appropriate accounts to cover such risks shall be credited to this account. Such charges and credits shall be upon the basis of rates which fairly cover the risks insured. These rates should be determined according to the carrier's experience and best estimate as to the hazard covered. A schedule of risks covered by this reserve shall be maintained giving a description of the property or the character of the risks covered.

(C) If the carrier reinsures with insurance companies risks initially covered in this account, the premiums for such reinsurance shall be charged hereto and the amounts recovered under such commercial insurance shall be credited hereto.

(D) To the extent that losses and damages sustained are covered by this account, an amount equal thereto shall be charged to this account and credited to the accounts appropriate for the losses and damages sustained.

NOTE.—All losses and damages sustained, including those covered by commercial insurance or by this account, shall be charged in the first instance to the depreciation reserve, carrier-property, repair, injuries to persons, loss and damage, or other appropriate account according to the character of the loss. Insurance recoverable, or chargeable to this account on account of losses and damages sustained, shall be credited to the account to which the losses and damages are chargeable.

73. OPERATING RESERVES.—(A) This account shall include ledger balances representing reserves created by charges to operating expenses for the maintenance of carrier property, personal injuries, injuries and damages, and other claims, such charges being made currently for the purpose of equalizing the charges to operating-expense accounts for the current accounting year. (See instruction 79.)

(B) It shall also include amounts charged to account 613, 663, 763, "Depreciation", to cover losses through obsolescence of operating-material stock. (See also account 17, "Material and supplies.")

572 The carrier shall adjust through the appropriate operating-expense accounts the balances in this account at the close of the year, except that the estimated amount of claims to be liquidated in the future shall be carried until payment is made and provisions for losses from obsolescence of material stock which shall be cleared as the losses are realized. A separate record shall be kept of operating-reserve accounts for each year.

NOTE A.—The credit balances in reserve accounts representing appropriations of income or surplus for sinking funds, etc., shall not be included in this account.

NOTE B.—Accrued depreciation credit balances shall be included in accounts 74 or 76, as may be appropriate.

74. ACCRUED DEPRECIATION—CARRIER PROPERTY.—(A) To this account shall be credited amounts charged to account 613, 663, 763, "Depreciation", investment in carrier-property, clearing, and other accounts to cover the loss in service value (note instruction 2-CC) of depreciable carrier property. It shall be credited also with any amounts which the carrier may be authorized to charge to account 311, "Delayed income debits", in respect of past accrued depreciation not provided for.

(B) At the time of retirement (note instruction 2-II) of depreciable carrier property this account shall be charged

with its service value (note instruction 2-CC) and to it shall be credited the insurance recovered, if any. It shall be credited with amounts chargeable to account 27, "Extraordinary maintenance suspense", or to account 312, "Debits from retired carrier property", and charged with amounts creditable to account 302, "Credits from retired carrier property", as provided in instruction 8-G.

(C) For corporate ledger and balance-sheet purposes, this account shall be regarded and treated as a single composite reserve. However, for purposes of analysis, the carrier shall maintain subsidiary records in which the depreciation reserve is broken down into component parts corresponding to the primary pipe-line accounts which include depreciable carrier property (see also instruction 8-E); these subsidiary records shall show the current credits and debits in the reserve in complete detail by such primary pipe-line accounts.

(D) Note paragraph (C) of the text of account 75 "Amortization reserve."

75. AMORTIZATION RESERVE.—(A) This account shall be credited with any amounts concurrently charged to account 314, "Miscellaneous debits", to provide a reserve for the retirement of amounts carried in account 192, "Unadjusted investments", account 2, "Cost of organization", or other carrier-property accounts.

(B) When any amounts carried in account 192, "Unadjusted investments", or account 2, "Cost of organization", are retired this account shall be charged with any amount previously credited thereto with respect to the property retired.

(C) If under the provisions of 19200, "Depreciation charges of carriers by pipe lines", the carrier is authorized by this Commission to amortize the remaining service value of carrier property the balance in account 74, "Accrued depreciation—Carrier property", shall be transferred to this account and subsequent accruals to this account shall be through amortization charges included in account 613, 663, 763, "Depreciation." Under such authorization it will not be required that balances in this reserve shall be broken down into component parts corresponding to the primary pipe-line accounts.

76. ACCRUED DEPRECIATION—MISCELLANEOUS PHYSICAL PROPERTY.—(A) To this account shall be credited amounts charged to account 403, "Income from miscellaneous operating physical property", or account 404, "Income from miscellaneous nonoperating physical property", to

573 cover the loss in service value (note instruction 2-CC) of miscellaneous physical property. It shall also be credited with any amounts which the carrier may under authority of this Commission charge to account 311, "Delayed income debits", in respect of past accrued depreciation not provided for.

(B) At the time of the retirement (note instruction 2-II) of depreciable miscellaneous physical property this account shall be changed with the service value (note instruction 2-CC) of the property retired and shall be credited with the insurance recovered, if any.

77. RESERVE FOR UNCOLLECTIBLE ACCOUNTS.—(A) This account shall include amounts charged to account 314, "Miscellaneous debits", to provide for the loss of amounts due from individuals and companies (other than pipe-line revenue charges) when found to be uncollectible.

(B) To this account should be charged the amounts due from other companies and individuals which have been found to be uncollectible.

78. OTHER DEFERRED CREDITS.—(A) This account shall include the amount of all deferred credits not includible in accounts 70 to 77, inclusive, such as retained percentages due to contractors to be paid upon completion of contract; installments of assessments for public improvements deferred with or without option to the carrier by the taxing authority; working fund advances from other companies; deposits (subject to refund) by employees to assure the return of company property such as keys, lanterns, etc.; credit balances in clearing accounts; and items charged to operating revenues, operating expenses, income, or surplus on an estimated basis in accordance with instruction 3.

(B) This account shall include also the amounts of credit balances in suspense accounts that cannot be entirely cleared and disposed of until additional information is received, such as accident repairs not completed; uncompleted accounts for property retired; fire loss; and other analogous items.

VIII. CORPORATE SURPLUS

81. MISCELLANEOUS RESERVES.—This account shall include the net balances of definite appropriations of income and surplus not provided for elsewhere. It shall include also income accretions to such reserve funds which are retained therein. (See also accounts 420, "Miscellaneous reservations of income", and 315, "Miscellaneous reservations of surplus.")

82. UNAPPROPRIATED SURPLUS.—(A) An account under this title shall be maintained in the general books of the carrier. It shall include the balance at the close of each calendar year as shown in the surplus statement.

(B) If the balance in this account is a deficit it shall be shown in the balance sheet in red. (See also instruction 41.)

574 CARRIER-PROPERTY ACCOUNTS

PRIMARY ACCOUNTS

[Note instruction 1-E]

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TEXT PERTAINING TO CARRIER-PROPERTY ACCOUNTS

The several primary accounts included in this group of accounts are designed to show the cost of land, rights-of-way, assessments for the construction of public improvements, fixed improvements, and equipment owned by the carrier and devoted to pipe-line operations.

101, 151, 171. LAND.—(A) This account shall include the cost of land of necessary width, held in fee simple, acquired for pipe lines; the cost of land for storage, station, office, shop, and other grounds; the cost of land for ingress to or egress from such grounds; the cost of land for borrow pits, waste banks, and for storage of material adjoining the right-of-way; the cost of land for wharves and docks, and the cost of riparian or water rights necessary therefor; the cost of removing from the right-of-way and locating elsewhere the property of others, and the cost of necessary land for relocation of the property, when such costs are assumed by the accounting carrier.

(B) When land, together with buildings thereon, is acquired the cost shall be fairly apportioned between the land and the buildings and accounted for accordingly. If the plan of acquisition contemplates the removal of the buildings, the total cost of the land and buildings shall be accounted for as the cost of the land and the value of the salvage of the buildings when disposed of shall be deducted from the cost of the land as determined.

(C) Proceeds from the sale of timber or of improvements purchased with land, less any cost of removal, shall be credited to this account.

(D) Proceeds from the sale of minerals known to be in the land when purchased and considered in the purchase price thereof shall be credited to this account.

575 (E) The cost of filling submerged or low land to establish a general level to render it usable for construction of fixed improvements or other use shall be included in this account.

(F) The amounts assessed on pipe-line property by governmental authority to cover the cost of constructing public improvements when such assessments are made against property within the defined areas of taxing districts and also cost borne by the carrier of public improvements constructed by it under governmental requirements shall be included in this account.

ITEMS

[Note instruction 6]

Abstracts.

Appraisals.

Commissions and fees paid to brokers, agents, and others.

Compensation and expenses of land agents when specifically assigned to land but not arbitrary apportionments for incidental services.

Condemnation expenses, including court costs and special counsel fees; also fees of commissioners appointed by the court to assess damages in condemnation proceedings.

Cost, including agreed settlements, judgments, witness fees, and decreed court costs in proceedings to clear or defend titles against defects antedating the carrier's acquisition of property.

Costs of making changes in or relocating property of others, when borne by the carrier in order to secure permanent rights to locations, the cost of which is includable in this account; also the cost of securing sites for such relocations.

Cost of securing less restricted use of land, whether payments to others for relinquishment of rights or losses sustained in property trades entered into solely to secure relief from such obligations.

Ditches for waterways when part of consideration.

Lump-sum payments for right to use in perpetuity or for a period of years public property for carrier service. Such amounts paid for the right to use for a period of years only shall be amortized through account 412, "Pipe-line taxes."

Notarial fees.

Payments to vendors to secure release from restricted provisions of original deeds.

Plats.

Premiums on condemnation bonds.

Recording deeds.

Removal and relocation of buildings and other structures not purchased.

Taxes and assessments for public improvements accrued and assumed at time of purchase.

Taxes on land during the construction period. (See also instruction 36-I.)

NOTE A.—When the acquisition of land for carrier service involves also the purchase of land not to be used for such purposes, the charges to this account shall be based upon the estimated cost at date of acquisition of only that portion which is used for carrier service. The estimated value of that portion which is not or will not in the near future be so used shall be included in account 5, "Miscellaneous physical property." When such land is practically worthless, it shall be included in the account at a nominal value for record purposes.

NOTE B.—Payments for options and of interest on options and on contracts to purchase land which it is proposed to use in contemplated construction projects shall be carried in account 28, "Other deferred debits", pending determination as to whether to proceed with the project. If it be decided to proceed with the project, the balance in account 28 shall be cleared therefrom and charged to account 191, "Construction work in progress"; if not, the amount lost, including interest, if any, shall be charged to account 314, "Miscellaneous debits."

NOTE C.—The net proceeds from the sale of minerals and timber in excess of the amount considered therefor in the purchase price of the land shall be credited to account 304, "Miscellaneous credits."

NOTE D.—When land has been purchased for a proposed pipe-line operation project and the project has been indefinitely postponed before construction work is begun, the cost of the property shall be transferred to account 5, "Miscellaneous physical property", sufficient details being included in the entry to permit the classification of the various items of cost in case the project is later pursued. The cost of the work which has been done shall be included in account 28, "Other deferred debits", until a decision shall have been reached as to execution or abandonment of the project. If it be determined to continue the work of the land and the work which has been done shall be transferred to account 191, "Construction work in progress." If the project eb abandoned the cost of the work which has been done shall be charged to account 314, "Miscellaneous debits."

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NOTE E.—Annual or more frequent payments for the use of land shall be charged to the account appropriate for the rents.

NOTE F.—When land is acquired for which there is not a definite plan for its use in pipe-line operation service, the cost shall be charged to account 5, "Miscellaneous physical property."

NOTE G.—In case land is purchased under a definite plan for its use in a construction project, its cost shall be included in account 191, "Construction work in progress", until such time as the project involved is completed ready for service.

102, 152. RIGHTS-OF-WAY.—This account shall include amounts paid for rights-of-way; also expenses in connection with obtaining such rights-of-way.

NOTE A.—The cost of land owned in fee simple, used as right-of-way, is provided for in account 101, 151, 171, "Land."

NOTE B.—Periodical rents paid for use of right-of-way shall be charged to account 640, 690, 790, "Operating rents."

103, 153. LINE PIPE.—This account shall include the costs of oil-line pipe laid in the construction of oil-pipe lines.

NOTE.—The cost of teaming and laying oil-line pipe is provided for in account 105, 155, "Pipe-line construction."

104, 154. LINE-PIPE FITTINGS.—This account shall include the cost of pipe fittings laid in construction of oil-pipe lines.

NOTE.—The cost of teaming and laying pipe fittings in oil lines is provided for in account 105, 155, "Pipe-line construction."

105, 155. PIPE-LINE CONSTRUCTION.—This account shall include all costs of constructing oil-pipe lines, except the cost of pipe and pipe fittings provided for in account 103, 153, "Line pipe", and account 104, 154, "Line pipe fittings."

It includes items such as teaming, labor expended in excavating, connecting up pipe lines, and back filling. It also includes damages incident to construction of pipe lines.

106, 156, 176. BUILDINGS.—This acount shall include the cost of buildings, including foundations, fixtures, and appurtenances, other than those the cost of which is chargeable to account 112, 162, "Delivery facilities."

NOTE A.—The cost of foundations special to boilers, engines, and pumps, and machine tools and machinery shall be included in the cost of such machinery and apparatus.

NOTE B.—The cost of grading and preparing grounds both before and after the construction of buildings, and the cost of constructing sidewalks, driveways, and fences thereon, shall be included in the cost of the buildings, as shall also the fees and expenses of architects specially employed for designing or supervising the construction of the buildings, but the cost of restoring the grounds after repair work shall be included in the appropriate operating-expense accounts. The cost of permanent water rights shall also be included in the cost of the buildings.

107, 157. BOILERS.—This account shall include the cost of boilers, including accessories and attachments such as injectors, water gages, steam gages and fittings, and the cost of special boiler foundations and installations.

NOTE A.—The cost of foundations other than those special to particular boilers shall be included in the cost of the building, and not in this account.

NOTE B.—The cost of boilers for use in connection with delivery facilities shall be included in account 112, 162, "Delivery facilities". The cost of boilers used for heating purposes shall be included in the cost of the building in which located.

108, 158. PUMPING EQUIPMENT.—This account shall include the cost of engines, motors, pumps, and all other pumping equipment, and the cost of special foundations and installation.

NOTE A.—The cost of foundations, other than those special to particular engines and pumps, shall be included in the cost of the building, and not in this account.

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NOTE B.—The cost of engines and pumps for use in connection with delivery facilities shall be included in account 112, 162, "Delivery facilities."

109, 159, 179. MACHINE TOOLS AND MACHINERY.—This account shall include the cost of machine tools and machinery, including the cost of their special foundations and installation.

NOTE.—The cost of foundations, other than those special to particular machine tools and machinery, shall be included in the cost of the building, and not in this account.

110, 160. OTHER STATION EQUIPMENT.—This account shall include the cost of all station equipment not provided for elsewhere, such as electric light, gas, and refrigeration equipment, manifolds, and miscellaneous equipment and fittings.

111, 161. OIL TANKS.—This account shall include the cost of oil tanks, including grades, roofs, fire banks, steam coils, swing pipes, inlet valves, and outlet valves.

112, 162. DELIVERY FACILITIES.—This account shall include the cost of facilities for receiving or delivering oil and oil products from or to water lines, railroads, and trucks, such as delivery racks, wharves (including buildings thereon), docks, and slips, including piling, pile protection, cribs, cofferdams, walls, and other necessary devices and apparatus for the operation or protection of such property.

It shall also include the cost of engines, pumps, and boilers at loading racks and on wharves, and of pipes from tanks to delivery facilities.

NOTE A.—The cost of land on which delivery facilities are located shall be charged to account 101, 151, 171, "Land."

NOTE B.—The cost of grading and preparing grounds, both before and after the construction of delivery facilities, and the cost of constructing sidewalks, driveways, and fences thereon shall be included in the cost of the facilities, but the cost of restoring the grounds after repair work shall be included in the appropriate operating-expense accounts.

113, 163 183. COMMUNICATION SYSTEMS.—This account shall include the cost of telegraph, wireless, telephone, and radio equipment.

DETAILS OF TELEGRAPH AND TELEPHONE TERMINAL EQUIPMENT

[Note instruction 6]

Batteries	Fuses and mechanical protectors
Cables and wires, interior	Rectifiers
Conduits, interior	Rheostats
Connecting wires	Sending and receiving instruments
Current-controlling instruments	Switchboards
Electric generators and motors	Testing outfits
Electric meters	Transformers
Engines, stationary	

DETAILS OF TELEGRAPH AND TELEPHONE OUTSIDE PLANT

[Note instruction 6]

Aerial attachments	Guy rods and wires
Braces	Insulators and pins
Brackets	Poles
Cables boxes and appurtenances	Submarine cables and connections
Cables and wires, aerial	Telephone pole boxes
Conduits and appurtenances	Towers
Cross arms and cross-arm bolts	Underground cables and connections
Guy stubs and anchors	

DETAILS OF RADIO AND WIRELESS EQUIPMENT

[Note instruction 6]

Radio transmitters	Wireless sending equipment
Radio receivers	Wireless receiving equipment
Radio antenna, complete with or without supports	

114, 164, 184. OFFICE FURNITURE AND EQUIPMENT.—This account shall include the cost of office equipment, furniture, and fixtures for general and local office buildings, such as office safes, desks, chairs, typewriters, adding and calculating machines, filing cabinets, fire extinguishers, rugs, carpets, and other floor covering, etc., when not built in or permanently attached to buildings.

115, 165, 185. VEHICLES AND OTHER WORK EQUIPMENT.—This account shall include the cost of motor and other vehicles, motor and other portable work equipment, and garage equipment, not specifically provided for in other accounts.

116, 166, 186. Other Property.—This account shall include the cost of property used in pipe-line operations not provided for elsewhere.

191. Construction Work in Progress.—This account shall include the cost of construction of carrier property not completed ready for service at the date of balance sheet, including the cost of land acquired for such projects (see note B to account 101, 151, 171, "Land") and of unapplied construction material and supplies located at point of use for the construction of new equipment and/or extensions. It includes interest and taxes during construction and other elements of cost of such construction work. When any carrier property, the cost of construction of which has been included in this account, is completed ready for service, the cost thereof shall be credited to this account and charged to other primary accounts of this classification appropriate according to the character of the property.

Note.—It is not required that this account shall include the cost of construction work which is placed in service as the work progresses.

192. Unadjusted Investments.—This account shall include the difference between the total amount of the carrier's investment as stated in account 1, "Investment in carrier property", and the accounting analysis of that account as stated in accounts 101 to 191, inclusive. The carrier may extinguish all or any part of the balance in this account through account 314, "Miscellaneous debits", or account 304, "Miscellaneous credits", as may be appropriate.

Surplus Accounts

Primary Accounts

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TEXT PERTAINING TO SURPLUS ACCOUNTS

I. CREDIT ACCOUNTS

301. INCOME BALANCE.—This account shall be maintained in the general books of the carrier. The balance of all income primary accounts (401 to 422, inclusive) shall be closed into this account at the end of each calendar year.

302. CREDITS FROM RETIRED CARRIER PROPERTY.—This account shall include the credits to surplus on account of:

(1) Land sold. (See also instruction 38-B-3.)

(2) From depreciable property abandoned, sold, or otherwise retired.

NOTE.—This account shall be used in accounting for depreciable property retired only after permission of this Commission has been obtained. (See instruction 8-G.)

303. DELAYED INCOME CREDITS.—This account which may be used only after permission of this Commission has been obtained, shall include relatively large credits relating to operating-revenue, operating-expense, and income accounts of previous calendar years. (See also instruction 4.)

NOTE A.—Except as provided in the foregoing, delayed items relating to operating-revenue, operating-expense, and income accounts, which have not been accrued, shall be included in the appropriate revenue, expense, or income accounts for the calendar year in which the audit of the item occurs.

NOTE B.—All entries in this account shall be made in such detail as will indicate the operating-revenue, operating-expense, or income accounts to which they relate.

[1] If a deficit, the balance shall be shown in red.
[2] If a loss, the balance shall be shown in red.

304. MISCELLANEOUS CREDITS.—This account shall include amounts, not provided for elsewhere, transferred from other accounts to surplus, and amounts representing increases of resources not properly assignable to the income accounts. Among the items which shall be included in this account are (see also instruction 6):

Adjustments or cancellations of balance-sheet accounts.

Amounts received for abrogation of contracts.

Cancelation of balance-sheet accounts representing unclaimed wages and vouchered accounts written off because of carrier's inability to locate the creditor.

Collections of old accounts previously written off.
Credits resulting from adjustments required to bring to par securities issued or assumed by the carrier and reacquired at a cost less than the par value.
Items erroneously collected and retained on account of inability to make refund.
Premium on capital stock at the time of its reacquirement. (See also instruction 26.)
Premium on foreign exchange. (See also instruction 5.)
Profit derived from the sale of investment securities.
Profit derived from the sale of property carried in account 5, "Miscellaneous physical property."
Sale of mineral deposits on property, when value thereof was not considered in the purchase price of the property.
Unreleased premiums on funded debt reacquired before maturity. (See also instruction 27.)

II. Debit Accounts

311. Delayed Income Debits.—This account, which may be used only after permission of this Commission has been obtained, shall include relatively large debits relating to operating-revenue, operating-expense, and income accounts of previous calendar years. (See also instruction 4.)

Note A.—Except as provided in the foregoing, delayed items relating to operating-revenue, operating-expense, and income accounts shall be included in the appropriate revenue, expense, or income accounts for the calendar year in which the audit of the items occurs.

Note B.—All entries in this account shall be made in such detail as will indicate the operating-revenue, operating-expense, or income accounts to which they relate.

312. Debits From Retired Carrier Property.—This account shall include amounts properly chargeable to surplus on account of:

(1) Land sold. (See also instruction 38-B-3.)

(2) From depreciable property abandoned, sold, or otherwise retired.

Note.—This account shall be used in accounting for depreciable property retired only after permission of this Commission has been obtained. (See instruction 8-G.)

313. Uncollectible Pipe-line Revenue.—This account shall include the amount of uncollectible revenue charges against companies and individuals representing tariff charges for service rendered (including not only the accounting carrier's revenue charges but also charges advanced to other carriers) when such amounts have been, during the period for which the surplus account is stated, determined to be uncollectible.

314. Miscellaneous Debits.—This account shall include amounts, not provided for elsewhere, chargeable to surplus

from other accounts, amounts written off in consequence of adjustments, and items not properly chargeable to income. Among the items which shall be charged to this account are (see also instruction 6):

Adjustments or cancelations of balance-sheet accounts.

Amortization unprovided for elsewhere.

Amounts charged on basis of estimates to provide a reserve for amounts due from other companies and individuals found to be uncollectible. (Note account 77, "Reserve for uncollectible accounts.")

Amounts paid for abrogation of contracts.

581 Debits resulting from adjustments required to bring to par securities issued or assumed by the carrier and reacquired at a cost exceeding the par value.

Discounts on foreign exchange. (See also instruction 5.)

Discounts on stock remaining unextinguished at the time of its reacquirement.

Losses or deficits not properly chargeable to income, such as uncollectible bills (other than bills covering pipe-line revenue charges) for which reserves have not been provided.

Losses resulting from the sale of investment securities.

Losses resulting from the sale, destruction, or abandonment of property carried in account 5, "Miscellaneous physical property."

Payments of old accounts previously written off.

Penalties and fines for violation of the Interstate Commerce Act or other Federal laws.

Unextinguished discounts on funded debt reacquired before maturity.

315. MISCELLANEOUS RESERVATIONS OF SURPLUS.—This account shall include amounts definitely reserved from surplus for purposes not provided for elsewhere, such as reserves provided for doubtful accounts.

NOTE.—Similar appropriations made from income shall be charged to account 420, "Miscellaneous reservations of income."

316. STOCK DISCOUNT EXTINGUISHED THROUGH SURPLUS.—This account shall include amounts definitely appropriated from surplus to reduce or extinguish the amount of discount on capital stock issued by the carrier. (See instruction 26.)

NOTE A.—Similar appropriations made from income shall be charged to account 421, "Stock discount extinguished through income."

NOTE B.—The use of this account is conditional upon the carrier having an adequate credit balance in surplus.

317. DIVIDEND APPROPRIATIONS OF SURPLUS.—(A) This account shall include amounts of dividends declared, chargeable to surplus, on actually outstanding capital stock issued or assumed by the carrier, other than debenture stock. (For definition of the several classes of capital stock see account 51, "Capital stock.") If a dividend is not payable in cash, the consideration shall be described in the entry with sufficient particularity to identify it.

(B) This account shall be subdivided so as to show separately the dividends on the various subclasses of capital stock.

NOTE A.—Interest accrued on debenture stock shall be charged to account 416, "Interest on long-term debt", or account 419, "Contingent interest on debt", as may be appropriate.

NOTE B.—This account shall not include charges for dividends on capital stock issued or assumed by the carrier and owned by it, whether pledged as collateral or held in its treasury, in special deposits, or in insurance or other special funds. (See also instruction 24.)

NOTE C.—Similar appropriations made from income shall be charged to account 422, "Dividend appropriations of income."

582 INCOME ACCOUNTS

PRIMARY ACCOUNTS

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Text Pertaining to Income Accounts

I. Credit Accounts

401. Operating Revenues.—This account shall include the total revenues classable in the operating-revenue accounts.

402. Rent From Lease of Pipe-line Property.—(A) This account shall include rents (including taxes, assumed by the lessee) from the exclusive use of carrier property when the taxes and/or maintenance are separable from the taxes and maintenance of property operated by the carrier.

(B) The maintenance (repairs and depreciation) of carrier property, the rent from which is includible in this account, shall be charged thereto, if assumed by the accounting carrier. (See also account 503, 533, "Rent revenues.")

Note A.—Taxes on leased property, the rent from which is includible in this account, shall be charged to account 412, "Pipe-line taxes", by the lessor.

Note B.—The rent from property, the cost of which is includible in account 5, "Miscellaneous physical property", shall be included in account 404, "Income from miscellaneous nonoperating physical property."

583 403. Income From Miscellaneous Operating Physical Property.—This account shall include the net balance of the revenues or income from, and the expenses (including depreciation) from the operation by the carrier of physical property, the cost of which is includible in account 5, "Miscellaneous physical property", and also of physical property of others leased and used by the carrier for other than transportation purposes. The rent for leased property which is used by the carrier for other than transportation purposes; assessments for maintenance of public improvements against such property when borne by the carrier; and directly assignable organization or administration expenses incident to investment in miscellaneous operating physical property shall be included in this account.

Note A.—Net credit balances shall be shown in the income statement in black, and net debit balances in red.

Note B.—Taxes on miscellaneous operating physical property shall be included in account 413, "Taxes on miscellaneous operating physical property."

404. Income From Miscellaneous Nonoperating Physical Property.—This account shall include the net credit balance of nonoperating revenues or income from and the expenses of (including depreciation but excluding taxes) physical property, the cost of which is carried in balance-sheet account 5, "Miscellaneous physical property."

Note A.—Net debit balance in this account should be shown in red.

Note B.—The net income from the operation of miscellaneous operating physical properties shall be included in account 403, "Income from miscellaneous operating physical property."

405. DIVIDEND INCOME.—(A) This account shall include dividends declared on stocks the income from which is the property of the carrier, whether such stocks are owned by the carrier and held in its treasury, or deposited in trust, or controlled through lease or otherwise.

(B) Dividends may be credited prior to the actual collection if their payment is reasonably assured by past experience, guaranty, anticipated provisions, or otherwise.

NOTE.—Dividends on stocks of other companies held in insurance or other special reserve funds shall be credited to account 407, "Income from insurance and other reserve funds."

406. INTEREST INCOME.—(A) This account shall include the interest on securities and debenture stock of other companies, the income from which is the property of the carrier, whether such securities are owned by it and held in its treasury, or deposited in trust, or controlled through lease or otherwise. It shall include also interest on notes and other evidences of indebtedness and interest on bank balances, certificates of deposit, open accounts (including open-account advances chargeable to account 6, "Investments in affiliated companies"), and other analogous items. Interest accrued shall not be credited before actual collection unless its payment is reasonably assured by past experience, guaranty, anticipated provisions, or otherwise.

(B) To this account shall be credited amounts charged to the property-investment accounts under the provisions of instruction 36-K-3, as interest on the carrier's own funds expended for construction purposes.

(C) There may be included in this account for each fiscal period the applicable amount requisite to extinguish, during the interval between the date of acquisition and the date of maturity, the discount or premium on funded securities owned, the income from which is includible in this account. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried. Any discount or premium remaining unex-
584 tinguished upon the maturity and satisfaction of such securities shall be cleared to surplus.

NOTE A.—Interest on securities of other companies held in insurance or other reserve funds shall be included in account 407, "Income from insurance and other reserve funds."

NOTE B.—Discount on bills for material purchased shall be credited to the account to which the cost of the material is charged.

407. INCOME FROM INSURANCE AND OTHER RESERVE FUNDS.—(A) This account shall include the income accrued on cash, securities, and other assets (not including securities is-

sued or assumed by the carrier) held in sinking, insurance, and other reserve funds. In this account shall be included also profits realized and losses sustained in the sale of securities held in such funds.

(B) There may be included in the accounts for each fiscal period the applicable amount requisite to extinguish during the interval between the date of acquisition and the date of maturity, the discount or premium on funded securities held in insurance or other reserve funds. Amounts thus credited or charged shall be concurrently charged or credited to the accounts in which the securities are carried.

NOTE.—Credits to fund reserve accounts representing income from those funds (retainable in them) shall be concurrently charged to account 420, "Miscellaneous reservations of income."

408. RELEASE OF PREMIUM ON FUNDED DEBT.—This account shall include during each fiscal period such proportion of the premiums on outstanding funded debt as is applicable to that period. This proportion shall be determined in accordance with instruction 27-C.

409. MISCELLANEOUS INCOME.—This account shall include all items, not provided for elsewhere, properly creditable to income during the fiscal period

ITEMS

[Note instruction 6]

Profits from conversion of funds of a foreign country into United States funds. (See also instruction 5.)

Fees collected in connection with the exchange of coupon bonds for registered bonds.

II. DEBIT ACCOUNTS

411. OPERATING EXPENSES.—This account shall include the total expenses classable in the operating-expense accounts.

412. PIPE-LINE TAXES.—This account shall include accruals for taxes of all kinds (including Federal and State income taxes) relating to carrier property, operations, privileges, and licenses, whether based upon the valuation of the property, amount of stocks and bonds issued or outstanding, gross or net earnings, dividends declared, expense requirements of governmental bodies, or otherwise.

This account shall be subdivided to show:

(A) Income and excess-profits taxes.
(B) Capital-stock taxes.
(C) Transportation taxes.
(D) Property taxes.
(E) Other taxes.

NOTE A.—Taxes assumed by the lessee on property the rent from which is includible in account 503, 553, "Rent revenues", shall be included in this account by the lessee. Other taxes, including property taxes, of the lessor assumed by the lessee, shall be included in this account by the lessor.

585 NOTE B.—Taxes on other than carrier property, operations, privileges, and licenses shall be charged to account 413, "Taxes on miscellaneous operating physical property", or account 414, "Miscellaneous taxes."

NOTE C.—Special assessments for street and other public improvements and special benefit taxes, such as water taxes and the like, shall be included in operating-expense or investment accounts, as may be appropriate. The entire amount of the assessment for each public improvement project shall be accounted for as soon as the amount thereof is determined. Installments deferred without option to the carrier shall be included in account 78, "Other deferred credits."

NOTE D.—Discount allowed for prompt payment of taxes shall be credited to the account to which the taxes are chargeable.

413. TAXES ON MISCELLANEOUS OPERATING PHYSICAL PROPERTY.—This account shall include the accrual of all taxes paid or payable on miscellaneous operating physical property.

NOTE.—Taxes on miscellaneous nonoperating physical property shall be included in account 414, "Miscellaneous taxes."

414. MISCELLANEOUS TAXES.—This account shall include all tax accruals not provided for elsewhere, such as taxes on securities owned, taxes on income from securities owned, and taxes on miscellaneous nonoperating physical property.

NOTE.—Discounts allowed for the prompt payment of taxes shall be credited to the account to which the taxes are chargeable.

415. MISCELLANEOUS INCOME CHARGES.—This account shall include all items not provided for elsewhere properly chargeable to income for a fiscal period.

ITEMS

[Note instruction 6]

Cost of advertising bonds drawn for redemption.

Membership fees and dues in associations which do not have some direct or intimate relations to pipe-line operations of the carrier.

Trusts, current expenses of maintaining and administering.

Premiums on bonds to assure performance of contractual obligations when payments under the contracts are chargeable to income accounts.

Losses due to conversion of funds of a foreign country into United States funds. (See also instruction 5.)

416. INTEREST ON LONG-TERM DEBT.—This account shall include the current accruals of interest on all classes of debt issued for a term of 2 years or more, such as debt the principal of which is includible in account 55, "Funded debt un-

matured", 56, "Receivers' certificates" (maturing more than 2 years from date of issue), or 57, "Nonnegotiable debt to affiliated companies." It shall also include interest accruals on debenture stock. This account shall be kept in such form that the interest on debenture stock, on receivers' certificates, and on other classes of funded debt may be shown separately in the annual report to this Commission.

NOTE A.—This account shall not include charges for interest on funded debt obligations issued or assumed by the carrier and owned by it, whether pledged as collateral or held in its treasury, in special deposits, insurance, or other funds. (See also account 407, "Income from insurance and other reserve funds.")

NOTE B.—Interest expressly provided for and included in the face amount of securities issued in the acquisition of physical property shall be charged, when the securities are issued, to a suspense account under account 28, "Other deferred debits", and cleared to this account as the interest accrues. (See also instruction 36-K-1.)

NOTE C.—Interest on funded debt obligations, the payment of the principal of which has been extended by agreement beyond the date of original maturity, shall be included in this account.

586 417. INTEREST ON UNFUNDED DEBT.—(A) This account shall include all accrued interest payable, except that chargeable to account 416, "Interest on long-term debt", or to the investment accounts. Discount and expenses on short-term notes, maturing 2 years or less from date of issue, if considerable in amount, shall be distributed by equal monthly charges to this account, throughout the term of the notes; if inconsiderable in amount, it shall be charged to this account when incurred.

(B) A list follows of representative items of indebtedness, interest on which is chargeable to this account:

(1) Advances other than investment advances from affiliated companies.

(2) Assessments for public improvements.

(3) Bond coupons, matured and unpaid.

(4) Capital-stock subscriptions, receipts for installments on.

(5) Claims and judgments.

(6) Funded debt matured, with respect to which a definite agreement as to extension has not been made.

(7) Open accounts (other than those classable in account 57, "Non-negotiable debt to affiliated companies").

(8) Receivers' certificates issued for a term of 2 years or less.

(9) Short-term notes payable on demand or having maturity dates 2 years or less from date of issue.

(10) Tax assessments, past due.

NOTE A.—When unfunded debt is incurred for carrier property, the accrual of interest thereon (less interest received on unexpended balances) to the date of completion or coming into service of the property so acquired shall be included in the appropriate carrier-property accounts. (See also instruction 36-K-1.)

NOTE B.—Interest payable on notes or other evidences of indebtedness maturing serially shall be charged to account 416, "Interest on long-term debt", if any portion of the obligation matures more than 2 years from date of issue.

NOTE C.—Interest on installments of taxes which are deferred without option of the carrier shall be included as a part of the assessment. All other interest on tax assessments shall be charged to this account.

418. AMORTIZATION OF DISCOUNT ON FUNDED DEBT.—This account shall include during each fiscal period such proportion of the discount and expense on outstanding funded debt as is applicable to that period. This proportion shall be determined in accordance with instruction 27-C.

419. CONTINGENT INTEREST ON DEBT.—This account shall include interest payable on funded debt, when a claim against income after fixed charges and prior to the interest of stockholders in the earnings of the carrier, such as interest on income bonds.

NOTE A.—Fixed interest on funded debt shall be included in account 416, "Interest on long-term debt."

NOTE B.—Contingent interest on funded debt obligations, the payment of the principal of which has been extended by agreement beyond the date of maturity, shall be included in this account.

420. MISCELLANEOUS RESERVATIONS OF INCOME.—This account shall include amounts definitely reserved from income for purposes not provided for elsewhere, such as reserves provided for doubtful accounts.

NOTE.—Similar appropriations made from surplus shall be charged to account 315, "Miscellaneous reservations of surplus."

421. STOCK DISCOUNT EXTINGUISHED THROUGH INCOME.—This account shall include amounts definitely appro-
587 priated from income to reduce or extinguish the amount of discount on capital stock issued by the carrier. (See also instruction 26-B.)

NOTE.—Similar appropriations made from surplus shall be charged to account 315, "Stock discount extinguished through surplus."

422. DIVIDEND APPROPRIATIONS OF INCOME.—(A) This account shall include amounts of dividends declared, chargeable to the income of the fiscal period, on actually outstanding capital stock issued or assumed by the carrier, other than debenture stock. (For definition of the several classes of capital stock see account 51, "Capital stock.") If a dividend is not payable in cash, the consideration shall be described in the entry with sufficient particularity to identify it.

(B) This account shall be subdivided so as to show separately the dividends on the various subclasses of capital stock.

NOTE A.—Interest accrued on debenture stock shall be charged to account 416, "Interest on long-term debt", or account 419, "Contingent interest on debt", as may be appropriate.

NOTE B.—This account shall not include charged for dividends on capital stock issued or assumed by the carrier and owned by it, whether pledged as collateral or held in its treasury, in special deposits, or in insurance or other special funds. (See also instruction 24.)

NOTE C.—Similar appropriations made from surplus shall be charged to account 317, "Dividend appropriations of surplus."

588 FORM OF INCOME STATEMENT

I. OPERATING INCOME:
- 501. Operating revenues.
- 411. Operating expenses.

Net revenue from operations.[1]

- 412. Pipe-line taxes:
  - (A) Income and excess-profits taxes.
  - (B) Other taxes.

Pipe-line operating income.[1]

- 403. Income from miscellaneous operating physical property.
- 413. Taxes on miscellaneous operating physical property.

Miscellaneous operating income.

Total operating income.[1]

II. OTHER INCOME:
- 402. Rent from lease of pipe-line property.
- 404. Income from miscellaneous nonoperating physical property.
- 405. Dividend income.
- 406. Interest income.
- 407. Income from insurance and other reserve funds.
- 408. Release of premium on funded debt.
- 409. Miscellaneous income.

Total other income.

Total income.[1]

III. MISCELLANEOUS DEDUCTIONS FROM TOTAL INCOME:
- 414. Miscellaneous taxes.
- 415. Miscellaneous income charges.

Total miscellaneous deductions.

Income available for fixed charges.[1]

IV. FIXED CHARGES:
416. Interest on long-term debt.
417. Interest on unfunded debt.
418. Amortization of discount on funded debt.
Total fixed charges.
Income after fixed charges.[1]

V. CONTINGENT CHARGES:
419. Contingent interest on debt.
Net income.[1]

VI. DISPOSITION OF NET INCOME:
420. Miscellaneous reservations of income.
421. Stock discount extinguished through income.
422. Dividend appropriations of income.
Total appropriations of income.
301. Income balance.[1]

[1] If a loss, the amount shall be shown in red.

589. OPERATING-REVENUE ACCOUNTS

GENERAL ACCOUNT

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I. OPERATING REVENUE 51

PRIMARY ACCOUNTS

(Note instructions 1-E and 61)

Gathering lines	Trunk lines		Page
501	551	Transportation revenue	51
502	552	Storage and demurrage revenue	51
503	553	Rent revenues	51
504	554	Miscellaneous revenue	51

TEXT PERTAINING TO OPERATING-REVENUE ACCOUNTS

I. OPERATING REVENUE

The primary accounts included in this general account are designed to show amounts of money which the carrier becomes entitled to receive, or which accrue to its benefit, from services rendered to others in gathering oil and oil products, in the transportation of oil and oil products, and from services incident to such operations.

501, 551. TRANSPORTATION REVENUE.—This account shall include the revenue from the transportation of oil and oil products.

502, 552. STORAGE AND DEMURRAGE REVENUE.—This account shall include the revenue from the storage of oil; also

demurrage charges incident to the failure of the consignee to receive oil or oil products promptly.

503, 553. RENT REVENUES.—This account shall include revenues from the rental or subrental to others of carrier property constituting a part of the property used by the carrier in its pipe-line operations when such property is maintained by the carrier and the cost of maintenance (repairs and depreciation) and taxes are not separable from other pipe-line property operated by the carrier. (See also account 402, "Rent from lease of pipe-line property.") It shall also include a fair rent for the carrier's own machines while used in construction work. (See instruction 36-C-2.)

504, 554. MISCELLANEOUS REVENUE.—This account shall include the revenue from sources other than the transporting and storage of oil and oil products, such as revenue from telegrams, telephone messages, and other incidental services.

590 OPERATING-EXPENSE ACCOUNTS

GENERAL ACCOUNTS

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PRIMARY ACCOUNTS

[Note instructions 1-E and 71]

I. MAINTENANCE

Gathering lines	Trunk lines	General clearing accounts		Page
601	651	751	Superintendence	53
602	652	752	Repairs of pipe lines	53
603	653	753	Changing of line construction	53
604	654	754	Repairs of buildings	53
605	655	.....	Repairs of pumping stations	53
606	656	.....	Repairs of oil tanks	53
607	657	.....	Repairs of delivery facilities	53
608	658	758	Repairs of communication systems	53
609	659	759	Repairs of office furniture and equipment	53
610	660	.....	Repairs of vehicles and other work equipment	53
611	661	761	Repairs of other property	54
612	662	762	Other expenses	54
613	663	763	Depreciation	54
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II. TRANSPORTATION

621	671	771	Superintendence	54
622	672	.....	Operation of pipe lines	54
623	673	.....	Operation of pumping stations	55
624	674	.....	Operation of oil tanks	55
625	675	.....	Operation of delivery facilities	55
626	676	776	Operation of communication systems	55
627	677	.....	Oil shortage	55
628	678	.....	Other expenses	55

III. GENERAL OFFICE SALARIES AND EXPENSES

631	681	781	General office salaries	55
632	682	782	General office supplies and expenses	55
633	683	783	Law expenses	55

IV. OTHER OPERATING EXPENSES

634	684	784	Injuries to persons	56
635	685	785	Relief and pensions	56
636	686	.....	Damage to property	56
637	687	787	Stationery and printing	56
638	688	788	Insurance	56
639	689	.....	Casualty losses	56
640	690	790	Operating rents	56
641	691	791	Other expenses	57

591 TEXT PERTAINING TO OPERATING-EXPENSE ACCOUNTS

I. MAINTENANCE

601, 651, 751. SUPERINTENDENCE.—This account shall include the pay of superintendents in charge of maintenance of pipe-line property; the pay of their assistants, engineers, draftsmen, clerks, and attendants; and an equitable proportion of the salaries of officers engaged in maintenance who are also engaged in work for the benefit of other departments, together with an equitable proportion of the pay of their assistants, clerks, and attendants.

This account shall also include the office expenses, or an equitable proportion thereof, of officers or employees whose pay is included in this account.

Office expenses include items such as repairs of rented offices, and the cost of heat, light, and postage.

602, 652, 752. REPAIRS OF PIPE LINES.—This account shall include the cost of repairs of oil-pipe lines, including the cost of renewing and replacing in kind line pipe or fittings.

This account shall also include pay and expenses of line walkers.

NOTE.—Units of line pipe and of fittings retired shall be accounted as retired and their service value charged to account 74, "Accrued depreciations—Carrier property."

603, 653, 753. CHANGING OF LINE CONSTRUCTION.—This account shall include all expenses, other than the cost of pipe and pipe fittings, in connection with the changing of location of oil-pipe lines.

604, 654, 754. REPAIRS OF BUILDINGS.—This account shall include the cost of repairs of buildings of all classes the investment in which is includible in account 106, 156, 176, "Buildings."

605, 655. REPAIRS OF PUMPING STATIONS.—This account shall include the cost of repairing oil-pumping stations, including the cost of repairing pumps, boilers, air compressors, manifolds, fuel and water tanks, water and gas pipe, electric-light or power machinery, dynamos, and switchboards used in pipe-line pumping stations.

NOTE.—The cost of repairs of oil-line pumping-station buildings shall be included in account 604, 654, 754, "Repairs of buildings."

606, 656. REPAIRS OF OIL TANKS.—This account shall include the cost of repairs of oil tanks, including grades, roofs, fire banks, steam coils, swing pipes, inlet valves, and outlet valves, and also mowing and cleaning tank farms.

607, 657. REPAIRS OF DELIVERY FACILITIES.—This account shall include the cost of repairs of delivery facilities the investment in which is includible in account 112, 162, "Delivery facilities."

608, 658, 758. REPAIRS OF COMMUNICATION SYSTEMS.—This account shall include the cost of repairs and relocations of communication systems the investment in which is includible in account 113, 163, 183, "Communication systems."

609, 659, 759. REPAIRS OF OFFICE FURNITURE AND EQUIPMENT.—This account shall include the cost of repairs of office furniture and equipment the investment in which is includible in account 114, 164, 184, "Office furniture and equipment."

610, 660. REPAIRS OF VEHICLES AND OTHER WORK EQUIPMENT.—This account shall include the cost of repairs of motor and other vehicles, motor and other portable work equipment, and garage equipment not specifically provided for in other accounts.

ITEMS:

[Note instruction 6]

Air compressors.	Hand tools.
Automobiles, motor trucks, and tractors, including those equipped with earth-boring machines, pumps, winches, etc.	Hand trucks.
	Harness.
	Lathes.
	Motor boats and barges.
Camp wagons, cars, and mounted kitchens.	Motorcycles and bicycles.
	Motors and generators.
Compressed air tools.	Planers.
Concrete mixers and breakers.	Pumps.
Derricks.	Tamping and back-filling machines.
Ditching machines.	Testing equipment, portable.
Draft animals.	Torches.
Drills and hammers, power.	Trailers.
Earth-boring machines.	Wagons.
Forges.	Winches, power.
Gasoline and oil pumps, portable.	

611, 661, 761. REPAIRS OF OTHER PROPERTY.—This account shall include the cost of repairs of property the investment in which is includible in account 116, 166, 186, "Other property."

612, 662, 762. OTHER EXPENSES.—This account shall include the cost, not provided for elsewhere, of repairs of property used in pipe-line operations.

613, 663, 763. DEPRECIATION.—(A) This account shall include charges covering the current loss from depreciation of carrier property.

(B) The carrier's records shall be kept in such manner that the charges for depreciation may be shown separately for each depreciable carrier-property account. (See also instruction 8-E and par. (C) of account 75 "Amortization reserve.")

(C) This account shall also include the amount of depreciation losses through obsolescence of material and supply stock. The amount thus charged to this account shall be concurrently credited to account 73, "Operating reserves."

614, 664. EXTRAORDINARY RETIREMENTS.—This account shall include the proportion of the service value of carrier property retired carried in account 27, "Extraordinary maintenance suspense", which, by authority of this Commission, shall be charged to operating expenses for the period. (See also instruction 8-G.)

NOTE.—Charges on account of oil in transit destroyed by fire shall be included in account 639, 689, "Casualty losses."

II. Transportation

621, 671, 771. Superintendence.—This account shall include the pay of superintendents in charge of pipe-line transportation service; the pay of their assistants, clerks, and attendants; and an equitable proportion of the salaries of officers engaged in transportation service who are also engaged in work for the benefit of other departments, together with an equitable proportion of the pay of their assistants, clerks, and attendants.

This account shall also include the office expenses, or an equitable proportion thereof, of officers, or employees whose pay is included in this account.

Office expenses include items such as repairs of rented offices, and the cost of heat, light, and postage.

622, 672. Operation of Pipe Lines.—This account shall include the pay of gagers and assistants, and others engaged in operating oil-pipe lines, and the cost of supplies furnished to and incidental expenses of such employees.

593 623, 673. Operation of Pumping Stations.—This account shall include the pay of engineers, firemen, and others employed in the operation of oil-line pumping stations; cost of power purchased, fuel, lubricants, packing, waste, machine oil, gaskets, compound, and other supplies for operating pumps, boilers, and electric or other lighting apparatus used in connection with pumping stations; cost of steam and water bought; cleaning station buildings and maintaining grounds when the work is performed by station employees; and all other expenses incurred in connection with the operation of pumping stations.

624, 674. Operation of Oil Tanks.—This account shall include the pay of tank tenders or gagers and other employees engaged in the operation of oil tanks, the cost of supplies used, and other expenses incurred in the operation of oil tanks.

625,675. Operation of Delivery Facilities.—This account shall include the pay of engineers, gagers, testers, car loaders, and other employees engaged in the operation of delivery facilities, and supplies used and expenses incurred in connection therewith.

626, 676, 776. Operation of Communication Systems.—This account shall include the pay of operators and messengers; the cost of chemicals, coppers, zincs, and other supplies for charging batteries; cost of fuel, light, and other supplies; and other expenses in connection with the opera-

tion of communication systems. (For rent of communication facilities see account 640, 690, 790, "Operating rents.")

627, 677. OIL SHORTAGE.—This account shall include the amounts paid for oil and oil products lost, except by fire, in the course of transportation or during storage.

NOTE.—Losses on account of destruction of oil and oil products by fire are provided for in account 639, 689, "Casualty losses."

628, 678. OTHER EXPENSES.—This account shall include all expenses in connection with transportation that are not properly chargeable to other transportation accounts.

III. GENERAL OFFICE SALARIES AND EXPENSES

631, 681, 781. GENERAL OFFICE SALARIES.—This account shall include the salaries of general officers directly in charge both of maintenance and operation of oil pipe lines, including the pay of their assistants, clerks, and attendants.

632, 682, 782. GENERAL OFFICE SUPPLIES AND EXPENSES.—This acount shall include the office, traveling, and other expenses of officers and employees whose salaries are includible in account 631, 681, 781, "General office salaries", or an equitable proportion thereof, including the cost of automobile and other vehicular service; cost of atlases, directories, periodicals, and other publications for office use; telephone and messenger service; express charges; telegraph and cable tolls; and other analogous items.

633, 683, 783. LAW EXPENSES.—This account shall include the pay and expenses of general attorneys, counsel, solicitors, and attorneys, their clerks and attendants, and expenses of their offices; cost of law books, printing of legal documents, recording documents, and securing abstracts of records; fees and retainers of attorneys, payments to arbitrators, costs of suits, witness or other fees; and all law and court expenses not provided for elsewhere.

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IV. OTHER OPERATING EXPENSES

634, 684, 784. INJURIES TO PERSONS.—This account shall include all expenses (other than law expenses) on account of persons killed or injured in the operation of pipeline systems; including the pay and expenses of claim agents, investigators, and adjusters; medical and hospital fees and expenses, funeral expenses, payments in settlement of claims for personal injuries; and wages paid disabled employees while off duty.

635, 685, 785. RELIEF AND PENSIONS.—(A) *Pensions.*—This account shall include pensions or gratuities paid out of the carrier's funds to retired employees or the heirs of for-

mer employees and the expenses solely in connection therewith.

(B) *Relief.*—This account shall also include premiums on policies under which employees are insured, and they or their heirs are the beneficiaries, and also expenses incurred and amounts contributed toward funds or other provisions, including sick benefits, for the relief of employees.

NOTE.—In case the carrier's pension plan establishes an irrevocable or contractual obligation for the payment of pensions, it shall, when so authorized by this Commission, accrue reserves through charges to this account to cover its actual liability for such payments. Application to this Commission for authority to accrue such reserves through charges to this account shall contain a full statement of the facts which in the judgment of the carrier establishes an irrevocable or contractual obligation. This statement shall be accompanied by complete particulars of the carrier's pension plan. No charges to this account shall be made in anticipation of discretionary pension payments in the future.

636, 686. DAMAGE TO PROPERTY.—This account shall include amounts paid for damage to the property of others (except oil lost) on account of bursting of pipes or by other occurrences incident to the operation and maintenance of pipe lines, including amounts paid under court judgments or in compromise of actions.

637, 687, 787. STATIONERY AND PRINTING.—This account shall include postage, stationery, and stationery supplies used in offices of officers whose salaries are includible in account 631, 681, 781, "General office salaries", not chargeable to other accounts, cost of printing reports, blanks, etc., also cost of stationery and printing for the law department, except cost of printing briefs, legal forms, testimony, reports, etc., used in legal proceedings.

638, 688, 788. INSURANCE.—This account shall include premiums (except reinsurance premiums) for insuring the accounting carrier against loss through injuries to persons or damage to or destruction or loss of property, whether caused by fire, accident, or other cause, when such loss to the accounting carrier would be chargeable to pipeline operations or to account 74, "Accrued depreciation—Carrier property", also premiums on fidelity bonds of employees whose pay is chargeable to the accounts for pipe lines.

639, 689. CASUALTY LOSSES.—This account shall include losses on account of destruction of oil and payments on account of damage by fire to oil in transit or in storage for which the accounting carrier is responsible.

It shall also include the cost of repairing damage to the accounting carrier's plant when caused by fire, flood, tornado, earthquake, or other casualties.

To this account shall be credited insurance recovered on account of losses chargeable to this account.

NOTE.—The accounting for the cost of replacing units of property destroyed by casualties shall be in accordance with instruction 38.

640, 690, 790. OPERATING RENTS.—(A) This account shall include rents payable for carrier property used in
595 transportation service, including space in buildings occupied by the carrier, space in conduits, pole-line space for attachments, and the rent for carrier property not provided for elsewhere.

(B) This account shall include also taxes borne by the lessee of the property the rent from which is chargeable to this account, except taxes on property the rent from which is includible in account 503, 553, "Rent revenues."

ITEMS

[Note instruction 6]

Rent for use of general offices.
Rent for use of ducts, conduits, and subways.
Rent for use of wires and telegraph and telephone circuits.
Rent for a complete pipe line or section thereof.
Rent for land for carrier facilities.
Rent for longitudinal occupancy of land for pipe lines.

NOTE A.—The expense incurred by the carrier in maintaining and operating property the rent for which is includible in this account shall be charged to the operating-expense account appropriate for owned property.

641, 691, 791. OTHER EXPENSES.—This account shall include all general operating expenses not properly chargeable to other general-expense accounts.

596 CLEARING ACCOUNTS

[Note instruction 91]

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801. Vehicles and other work equipment expenses	59
802. Shop expenses	59
803. Material store expenses	59
804. Machine tools and machinery—Maintenance	60

TEXT PERTAINING TO CLEARING ACCOUNTS

801. VEHICLES AND OTHER WORK EQUIPMENT EXPENSES.—(A) This account shall include the expenses of repairing and operating vehicles, and other work equipment, including the expenses of operating garages and stables.

(B) This account shall be cleared by adding to the cost of the work performed through the use of such property, such amounts as will distribute such expenses equitably.

ITEMS

[Note instruction 6]

Insurance against losses and damages to or by vehicles and other work equipment.

License fees for drivers.

Overages and shortages in material and supplies for vehicles and other work equipment.

Repairs of vehicles and other work equipment.

Supplies, such as food, fuel, gasoline, oil, tires, tubes, tire chains, soap, waste, sponges, measures, funnels, electric power, etc., used in the operation of vehicles and other work equipment, garages, and stables.

Supervisors and their office and field forces, including inspectors, testers, garage men, and other employees, pay and expenses of.

NOTE.—When the cost of maintaining and operating vehicles and other work equipment is directly chargeable to the accounts for gathering lines or for trunk lines, the expenses of maintaining and operating them may be charged direct to the accounts for gathering lines or trunk lines, instead of being cleared through this account.

802. SHOP EXPENSES.—(A) To this account shall be charged items of expense at shops and other places at which mechanical work is done, not assignable direct to specific accounts.

(B) For the purpose of securing an equitable assignment of shop expenses to the cost of the output of the shops, a separate clearing account shall be maintained for each shop plant. (Note instruction 2-DD.)

(C) The shop expenses for each shop plant shall be apportioned each month among the various accounts to which are chargeable the directly assignable expenses of the plant. The apportionment of shop expenses to each account shall be based upon the ratio of the shop expenses to the total assigned labor of the shop plant. The carrier is permitted to make the monthly apportionments of shop expenses on the basis of percentage rates, provided these rates are currently adjusted, and provided further that the balance in this account for each shop plant shall be fully apportioned and distributed at the close of each calendar year.

597 (D) The expenses assignable to this account are as follows:

(1) *General shop employees.*—The pay of general foremen in small shops, who exercise direct supervision over all departments unassisted by department foremen; the pay of department foremen, assistant department foremen, other supervising or directing employees, and their clerks; pay of chauffeurs and oilers; pay of sweepers, cleaners, and other unskilled laborers employed in gen-

eral work in and about shops and shop grounds; pay of watchmen, gatekeepers, and policemen at shops and other places at which mechanical work is done; pay of employees while attending fires or fire drills; pay of employees while making, repairing, or having charge of small shop tools; and the pay of employees while regularly engaged in making shop delivery of material from warehouses.

(2) *Power.*—The pay of stationary engineers, firemen, electricians, fuel handlers, and other employees engaged in production of power; cost of fuel used in steam and other power plants in producing power for shops and for other places at which mechanical work is done; cost of oil, grease, waste, and other material used in the operation of such power plants; cost of carbon brushes, fuses, lamps, picks, pokers, scuttles, shovels, and other small tools and supplies, and cost of water and power purchased.

(3) *Heating.*—The cost of fuel and other supplies used for heating shops and other places at which mechanical work is done, shop offices, watchmen's gatekeepers', and inspectors' boxes; and the pay of firemen, fuel handlers, and other employees engaged in operating heating boilers.

(4) *Lighting.*—The cost of electric current, gas, oil, torches, lamp burners, lamp chimneys, lamps not permanently attached to buildings, incandescent lamps and flood lights, and other material used in lighting shops and shop offices and other places at which mechanical work is done, and cost of material used and labor expended in operating electric plants and repairing electric light and other lamps at shops.

(5) *Shop supplies.*—Fuel for forge and other shop work; supplies and small tools used by mechanics and other employees engaged in construction or repair work; test-room and laboratory supplies used in connection with shop work; lubricating material for shop machinery and tools; water used at shops and shop offices and other places at which mechanical work is done; and other supplies used generally in shop work.

(6) *Incidental expenses.* — Watchmen's uniforms, clocks, and call boxes; traveling expenses connected with the operation of shops not directly chargeable to other accounts; removal of snow and ice from shop yards when removed by shop employees; cost of ice for shops; and other undistributed shop expenses.

(7) The balance in this account shall be included in account 28, "Other deferred debits."

803. MATERIAL STORE EXPENSES.—(A) To this account shall be charged expenses directly incurred in connection with purchasing, handling, and storing material in and distributing it from the carrier's warehouses, including the pay of employees in the store departments and their traveling, office, and other expenses. The pay and expenses of men employed in inspecting a single class of material shall be added as store expenses to the cost of that particular material.

(B) The total amount of warehouse expenses charged to this account shall be so distributed among the accounts to which material has been charged that the amounts thus distributed will be, for each account, in proportion to the value of the material consumed chargeable thereto.

598 To avoid monthly fluctuations in the ratio of store expenses to the value of material purchased or issued, carriers may make a monthly apportionment on the basis of fair percentage rates, provided the store-expense account be adjusted and closed out at the end of each calendar year.

(C) The monthly balance in this account shall be included in account 28, "Other deferred debits."

804. MACHINE TOOLS AND MACHINERY—MAINTENANCE.—(A) This account shall include the cost of repairs of machine tools and machinery.

(B) This account shall be cleared by adding to the cost of the work performed through the use of such property, such amounts as will distribute such expenses equitably.

NOTE A.—The cost of labor expended and material consumed in the operation of machine tools and machinery shall be charged direct to the work in connection with which such property is operated.

NOTE B.—The depreciation charges for machine tools and machinery shall be included in account 613, 663, 763, "Depreciation." Charges to other than the operating-expense accounts to cover depreciation on such property shall be credited to account 503, 553, "Rent revenues."

599 APPENDIX A

LIST OF ACCOUNTING UNITS OF PROPERTY FOR PIPE-LINE COMPANIES

[Note instruction 6]

(A) This list of units is established for the purpose of designating items of carrier property, the book cost of which shall be credited to the carrier-property accounts at the time of retirement (note instruction 2-AA-II) for replace-

ment (note instructions 2-Z and 38-B-C-D). When the measure of a unit is a stated quantity it shall be construed as including the quantity or quantity greater than the stated quantity.

(B) There shall be credited also to the carrier-property accounts the book cost (estimated if not known) of any minor item (note instruction 2-P) of property retired and replaced with a part of a different type or design or constructed of a different grade of material rendering the part applied more or less durable or of greater or less capacity than the item retired. (See also instructions 8-A and 38-B-2-b and note thereto.)

(C) The book cost of all property retired and not replaced shall be credited to the carrier-property accounts.

102, 152. Rights-of-way.

A section of right-of-way.

103, 153. Line Pipe.

Pipe in an entire pipe line or section thereof.

500 feet of pipe 6 inches in diameter and up in a continuous section.

1,000 feet of pipe of less than 6 inches in diameter in a continuous section.

104, 154. Line-Pipe Fittings.

Fittings in a complete pipe line.

Fittings for pipe lines 6 inches or more in diameter contained in a continuous section of 500 feet of pipe line.

The fittings for pipes less than 6 inches in diameter contained in a continuous section of 1,000 feet of pipe line.

105, 155. Pipe-Line Construction.

The construction cost pertaining to a section of pipe line.

106, 156, 176. Buildings.

A complete building.

An entire roof with or without supporting members.

A complete fire escape.

A complete heating system.

An elevator complete with operating mechanism.

107, 157. Boilers.

A complete boiler.

108, 158. Pumping Equipment.

A complete engine with or without foundation.

A complete pump with or without foundation.

A power-transmission system.

600 109, 159, 179. MACHINE TOOLS AND MACHINERY.
A machine tool.
A foundation special to a machine.
A motor, generator, steam engine, pump, ventilating fan, or other similar equipment.
A coal-handling system.
An ash-handling system.
A furnace.
A boiler.
110, 160. OTHER STATION EQUIPMENT.
Each complete item of property—the book cost of which was charged to the carrier-property account.
111, 161. OIL TANKS.
A complete oil tank with or witnout grade and fire walls.
A fire wall.
A tank grade.
112, 162. DELIVERY FACILITIES.
A motor, generator, engine, pump, or similar equipment.
A delivery-pipe system.
A complete wharf.
A section of wharf.
A pile cluster or dolphin.
A complete loading or unloading rack.
A complete railroad siding.
113, 163, 183. COMMUNICATION SYSTEMS.
Telegraph and telephone terminal equipment.
A complete switchboard.
Telegraph and telephone outside plant.
A continuous section of 1 mile of aerial wire.
A section of 1,000 feet of aerial cable.
A section of 500 feet of submarine cable.
A section of 500 feet of conduit.
A continuous section of 35 poles.
A case of equipment, such as loading coil or auto-transformer.
Radio and wireless equipment.
A transmitting set.
A receiving set.
An antenna, complete, or without supports.
114, 164, 184. OFFICE FURNITURE AND EQUIPMENT.
Each complete item of furniture or equipment the book cost of which was charged to the carrier-property account, such as—

A desk, chair, table, davenport, typewriter, computing machine; a section of book case, filing cabinet; rug, carpet, or other floor covering for one room.

115, 165, 185. VEHICLES AND OTHER WORK EQUIPMENT.

Each complete item of equipment the original cost of which was charged to the carrier-property account, such as—

A passenger automobile or truck with or without body; a tractor; a pole derrick, power winch, earth-boring machine, or trailer.

116, 166, 186. OTHER PROPERTY.

Each complete item of property the book cost of which was charged to the carrier-property account.

601

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 27th day of November, A. D. 1942.

PIPE LINES—UNIFORM SYSTEM OF ACCOUNTS

The Uniform System of Accounts for Pipe Lines, (Part 20 of Title 49, Code of Federal Regulations) being under consideration by the division, pursuant to authority of Section 20 of the Interstate Commerce Act, and the division having found need for modifications and amendments of the Uniform System of Accounts for Pipe Lines, the modifications and amendments attached hereto and made a part hereof being found necessary for administration of the provisions of Part I of the Act, are hereby approved: and

IT IS ORDERED, That all carriers by pipe line subject to the provisions of the Interstate Commerce Act, and every trustee, executor, administrator, or assignee of any such pipe line carrier, be, and they are hereby, required to comply with the Uniform System of Accounts for Pipe Lines as hereby modified and amended;

IT IS FURTHER ORDERED, That this order shall become effective January 1, 1943, and that the order of July 15, 1941, the effective date of which has been postponed to January 1, 1943, be, and it is hereby canceled and superseded;

AND IT IS FURTHER ORDERED, That a copy of this order shall be served upon every carrier by pipe line subject to the Act and upon every trustee, executor, administrator, or assignee of any such pipe line carrier, and that notice of

this order be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register, The National Archives.

By the Commission, division 1.

W. P. BARTEL,
Secretary.

(SEAL.)

602 MODIFICATIONS OF THE UNIFORM SYSTEM OF ACCOUNTS FOR PIPE LINES.

(1) Modify paragraph (V) of instruction 2 to read as follows:

(V) "Original cost" as applied to carrier property, means actual construction cost if of record and estimated if not of record.

(2) Insert the words "less than units of" after the word "recovering" in the note to paragraph (CC) of instruction 2 and substitute the number "193" for the number "192" in paragraph (GG) thereof.

(3) Modify instruction 5 to read as follows:

5. PROFITS AND LOSSES FROM FOREIGN EXCHANGE.

Profits and losses from premiums and discounts on foreign exchange shall be included in account 409, "Miscellaneous income," or account 415, "Miscellaneous income charges," as may be appropriate.

(4) Cancel paragraph (C) of instruction 8.

(5) Modify instruction 22 to read as follows:

22. CURRENT ASSETS.

(A) In the group of accounts designated as current assets (accounts 9 to 20, inclusive) shall be included cash, those assets which are readily convertible into cash or held for current use in operations or construction, current claims against others, and amounts accruing to the carrier which are subject to current settlement.

(B) There shall not be included under current assets any amount the collection of which is not reasonably assured by the known financial condition of the debtor. The amount of any item of current character but doubtful value shall be written down or written off by charges to account 423, "Bad debts."

(6) Modify instruction 23 to read as follows:

23. BOOK VALUE OF SECURITIES OWNED.

(A) This system of accounts requires that the securities of others acquired by the carrier shall be recorded at the money value, at the time of acquisition, of the consideration given therefor by the carrier, but excluding amounts paid for accrued interest or accrued dividends.

603 (B) The carrier shall write down such book costs or create reserves in recognition of a substantial decline in the value of the securities. Fluctuations in market values shall not be recorded but permanent impairment in values shall be recognized in the accounts. Securities shall be written down or reserves created to reflect loss in value, or written off entirely if there is no reasonable prospect of future value. Adjustments in the book values of securities shall not be delayed beyond the year in which a loss is claimed for income tax purposes. The amount of such adjustments shall be debited to account 314, "Miscellaneous debits."

(C) Carriers may create reserves to provide for depreciation in the values of securities owned by charges to account 314, "Miscellaneous debits." (Note account 79, "Reserve for adjustment of investment in securities.")

(D) When securities with a fixed maturity date are purchased at a discount or premium (i. e., when the total cost including brokerage fees, taxes, commissions, etc., is less or more than par) such discount or premium may be amortized over the remaining life of the securities by periodical debits or credits to the account in which the cost of the securities is recorded with corresponding credits to account 409, "Miscellaneous income," or debits to account 415, "Miscellaneous income charges," as appropriate. If the annual amount to be amortized does not exceed $1,000, the carrier may write off the total discount or premium by inclusion in the appropriate income account. No amortization entries shall be recorded in respect to discount upon securities held as investments unless there is reason to believe the securities will be disposed of at a sum equal to par or par will be collected at maturity.

(7) Modify paragraph (B) of instruction 24 to read as follows:

(B) The necessary adjustments of the difference between book liability for securities reacquired and the amount actually paid for them shall be made in accordance with the provisions of instructions 26 and 27 as appropriate.

(8) Modify the title of account 81 referred to in instruction 25 to read "Appropriated earned surplus."

(9) Cancel paragraphs (B), (C), (D), (E), (F), and (G) of instruction 26 and substitute the following therefor:

(B) Discount on each subclass of capital stock may be offset or reduced by charges to account 53, "Premium on capital stock," to the extent that premiums have been included therein, or to account 80, "Unearned surplus," to the extent that net gains from reacquisition, resale, or retirement of capital stock applicable to such subclass have been included therein. Any remaining discount may be amortized by charges to account 316, "Stock discount extinguished through surplus," or may be retained in account 25, "Discount on capital stock," until the stock to which the discount applies is reacquired.

(C) Except as provided in paragraph (B) premiums on capital stock shall be carried in account 53, "Premium on capital stock," until the stock to which the premiums apply is reacquired.

(D) When an issue of capital stock, or any part thereof, is reacquired either by purchase or through donations by stockholders, it shall be charged at its par value, or if stock without par value, at the proportionate amount at which the particular class of stock is included in account 51, "Capital stock," to that account if canceled, and to accounts 4, "Sinking funds," 8, "Company securities owned," or 22, "Insurance and other funds," as may be appropriate, if not canceled. The difference between the amount at which such reacquired stock was recorded in account 51, "Capital stock," and the amount paid by the accounting company for such stock, including any premiums or discount applicable to each subclass carried in account 53, "Premium on capital stock," or account 25, "Discount on capital stock," shall be included in account 80,

"Unearned surplus," *provided*, however, that the excess of a debit over the amount of accumulated net gains applicable to each subclass included in unearned surplus shall be charged to account 314, "Miscellaneous debits."

(E) When reacquired capital stock is resold the difference between the amount at which such stock is included in a particular asset account, and the net sale price realized when resold shall be included in account 80, "Unearned surplus," subject to the proviso in the previous paragraph.

605 (F) In no case shall discount on capital stock be charged to or included in any account as a part of the cost of acquiring property or as a part of the cost of operation.

(G) Assessments against stockholders shall be credited to the premium account of the particular class of capital stock so assessed, except that assessments with respect to nonpar stock shall be credited to account 51, "Capital stock."

(10) Cancel paragraph (B) of instruction 27 and designate paragraph (F) thereof paragraph (B).

(11) Add the following instruction:

30. REORGANIZATIONS.

(A) Where a carrier involved in receivership or bankruptcy is so reorganized as to preserve in whole or in part the interests of its owners and creditors, whether through the owning corporation or a successor corporation, or is a company resulting from reorganization of a carrier in any other manner, and such company emerges from such reorganization as the owner of investments, it shall at the time of recording such investments on its books include in account 193, "Acquisition adjustment," the net difference between the total of accounts 1 to 28, inclusive, (after distributing to the primary property accounts other than account 193 the original cost of the transportation property involved), and the total of accounts 51 to 79, inclusive, as those accounts are properly adjusted under the reorganization plan. The journal entries recording such investments shall be presented to the Commission for consideration and approval before being entered on the books.

(B) The carrier shall apply to the Commission for permission to use account 193, so far as it is

adequate, for the adjustment of differences between amounts originally set up with respect to such investment items and the value of such items as finally determined; and earned surplus shall be affected only by losses and gains clearly attributable to operations subsequent to date of reorganization.

2) Modify the parenthetical phrase in paragraph (A) of instruction 31 to read (101 to 193 inclusive) and paragraph (C) thereof to read as follows:

6 (C) For the purpose of this system of accounts the classification of property as between carrier and noncarrier shall be consistent with the classification of property for valuation purposes, except that when the dominant use of carrier property is for pipe-line operations it is not contemplated that either the cost of parts not used for carrier purposes or rented to others shall be excluded from account 1, "Investment, in carrier property."

3) Cancel paragraphs (A), (B), (C), (D), and (E) of instruction 34 and substitute the following therefor:

34. PIPE-LINE OPERATING PROPERTY PURCHASED.

(A) When property that will be used in pipe-line operations is purchased, such property shall be charged to account 1, "Investment in carrier property," at the purchase price in accordance with instruction 35, except that where the purchase price exceeds $25,000 but is less than the original cost the carrier may charge the original cost of the property as carried in the accounts of the vendor to account 1, "Investment in carrier property," in which case the excess of original cost over purchase price shall be credited to the depreciation reserve. Where the purchase price exceeds $25,000 and is less than the original cost and the accounting carrier elects to classify the property on the basis of purchase price, it shall after completing the studies necessary, distribute such purchase price among the appropriate primary carrier property accounts other than accounts 192 and 193, on the basis of an approximation or reasonable estimate of the values of the related property.

(B) Where the purchase price exceeds $25,000 and also exceeds the original cost the charges to primary carrier property accounts other than accounts 192 and 193 shall in no case exceed the original cost of the property acquired. In such cases

the difference between the sum of the amounts includible in the primary carrier property accounts and the purchase price shall be included in account 193, "Acquisition adjustment."

(C) When the purchase price of pipe-line property does not exceed $25,000 the property shall be charged to the appropriate primary carrier property accounts other than accounts 192 and 193 at the price paid for the property.

607 (D) Tentative journal entries recording the purchase of pipe-line property at a cost in excess of $25,000 shall be presented to the Commission for consideration and approval. The text of such entries shall give a complete description of the property purchased and the basis upon which the amounts of the entries have been determined.

(14) Modify the text of instruction 35 (with no change in note thereto) to read as follows:

35. ITEMS TO BE CHARGED.—To these accounts shall be charged the cost of all carrier property acquired, including property purchased, other than as provided for in instruction 34, property constructed by or for the carrier (including units of property replacing property retired), improvements to the existing property, and all property transferred from noncarrier to carrier use.

(15) Cancel the following sentence in subparagraph (3) of paragraph (C) of instruction 36:

A fair rent to cover the depreciation of the carrier's own machines—the rent thus charged to be concurrently credited to account 503, 552, "Rent revenues."

(16) Cancel subparagraph (3) and the note thereto and subparagraph (4) of paragraph (K) of instruction 36 and substitute the following therefor:

(3) On expenditures made for a construction project that has been suspended, no interest charges from the date of suspension shall be included in the carrier property accounts unless authorized by the Commission.

(17) Cancel the parenthetical clause at the end of paragraph (C) of instruction 38 and add the following note thereto:

Note.—Where pipe constituting a unit of property is retired and replaced in the same location, the cost of opening and backfilling the trench to-

gether with the cost of laying the pipe in replacement, shall be charged to account 105, 155. The cost of taking out the retired pipe shall be accounted for as cost of recovering the salvage.

Where pipe constituting a unit of property is retired and replaced in a different location, the cost of opening and backfilling the old trench, together with the cost of taking out the retired pipe, shall be accounted for as cost of recovering the salvage. The cost of digging and backfilling the new trench, together with laying the pipe in replacement shall be charged to account 105, 155.

608 The book cost of pipe-line construction applicable to line pipe, constituting a unit of property, retired and replaced in the same or a different location, shall be credited to account 105, 155, with concurrent debit to account 74.

(18) Cancel the caption "Surplus Accounts" and the title and text of instruction 41, "Purpose of surplus accounts," and substitute the following therefor:

EARNED SURPLUS ACCOUNTS

41. PURPOSE OF EARNED SURPLUS ACCOUNTS.

The earned surplus accounts are a group of primary accounts that form the connecting link between the income accounts and the balance sheet account, "Earned surplus." The several accounts thereof (301 to 317) are designed to show the changes in earned surplus or deficit during each calendar year resulting from (a) the operations and other transactions during the period as reflected in the income accounts, (b) appropriations or other reservations of earned surplus for specific purposes, (c) accounting adjustments not properly attributable to the period, (d) gains and losses not accounted for elsewhere, and (e) appropriations for dividends.

(19) Substitute the number "423" for the number "422" in the parenthetical phrase in instruction 51.

(20) Add the following note D to account 1, "Investment in carrier property":

Note D.—"Held under a definite plan for pipe-line operations" referred to above, implies the ability of the carrier to substantiate by plans or policy its characterization of the probable future use which is to be made of the property within a reasonable period of time.

(21) Insert the following clause in the text of account 12, "Special deposits," before the words "and other deposits":

and amounts placed in funds or deposited in banks for the payment of taxes assessed under the Social Security Act;

609 (22) Add the following sentences after the first sentence of paragraph (C) in the text of account 17, "Material and supplies":

If the material is reconditioned the cost of reconditioning shall be added to the value of the material as recovered. When used or reused, the value of the material as carried in this account shall be credited hereto and charged to the account appropriate according to the purpose for which the material is used.

(23) Add the following as paragraph (D) of the text of account 17, "Material and supplies":

(D) The cost of oil owned by the carrier other that used to maintain lines and storage tanks in condition for the transportation of commercial oil provided for in account 3, "Operating oil supply," shall be included in this account.

(24) Modify the text of account 24, "Taxes paid in advance," to read as follows:

24. TAXES PAID IN ADVANCE.

This account shall include the amounts of taxes paid in advance, except minor amounts which may be charged direct to the final accounts. As the term expires for which the taxes are paid, this account shall be credited and accounts 412, "Pipe-line taxes," 413, "Taxes on miscellaneous operating physical property," 414, "Miscellaneous taxes," or the carrier-property accounts, as appropriate, shall be charged.

(25) Eliminate the words "and premium" from the text of account 25, "Discount on capital stock."

(26) Modify paragraph (D) of account 51, "Capital stock, to read as follows:

(D) When capital stock is retired or canceled, this account shall be charged with the amount at which such stock is carried therein. (See instruction 26.)

(27) Eliminate the words "discount and" from note A to account 51, "Capital stock," and cancel notes B, C, and D to that account.

(28) Eliminate the words "discount and" from the text of account 53, "Premium on capital stock."

610 (29) Insert the words "amount of the employees' tax withheld," in the text of account 61, "Accounts payable," before the words "and other items."

(30) Add the words "including the amount of the employers' tax assessed under the Social Security Act" at the end of the text of account 68, "Taxes accrued."

(31) Modify paragraph (D) of the text of account 74, "Accrued depreciation—Carrier property," to read as follows:

(D) Note text of account 75, "Amortization reserve."

(32) Cancel the text of account 75, "Amortization reserve," and substitute the following therefor:

75. AMORTIZATION RESERVE.

(A) This account shall be credited with amounts concurrently charged to account 613, 663, 763, "Depreciation," when the carrier is authorized by the Commission to provide a reserve to extinguish amounts carried in account 1, "Investment in carrier property," relating to probable abandonment of carrier property due to exhaustion of particular sources of traffic, the date of which can be predicted with a reasonable approach to accuracy. In the event a change from depreciation accounting to amortization accounting is authorized by the Commission the balance in account 74, "Accrued depreciation—Carrier property," shall be transferred to this account. It is not required that balances in this reserve shall be broken down into component parts corresponding to the primary investment accounts. This account shall be charged at the time of retirement with the service value of property retired for which the carrier has accrued amortization.

(B) This account shall also be credited with amounts concurrently charged to account 314, "Miscellaneous debits," to provide for the retirement of amounts included in account 2, "Cost of organization," or 193, "Acquisition adjustment." When amounts are written out of these latter accounts, this account shall be charged with the balance carried therein with respect to such items.

(33) Cancel account 77, "Reserve for uncollectible accounts."

611 (34) Add the following account:

79. RESERVE FOR ADJUSTMENT OF INVESTMENT IN SECURITIES.

(A) This account shall include the total of the balances in reserves maintained by the accounting company for the purpose of providing for reductions in the values of securities owned. Corresponding charges shall be made to account 314, "Miscellaneous debits." (See instruction 23.)

(B) When such securities are written down, written off, or disposed of, this account shall be charged with amounts hereto with respect to the securities involved. If so authorized by the Commission recoveries in value of such securities not in excess of the reserve balance applicable thereto may be eliminated by credit to account 304, "Miscellaneous credits."

(35) Cancel account 81, "Miscellaneous reserves," and account 82, "Unappropriated surplus."

(36) Add the following accounts:

80. UNEARNED SURPLUS.

(A) This account shall include all surplus not classified as earned surplus. It shall include credits from reductions of the par or recorded value of the accounting company's capital stock; surplus arising from donations by the accounting company's stockholders; gains from acquisition, retirement, or resale of reacquired shares of the accounting company's capital stock and by forgiveness of debt of the accounting company.

(B) This account shall be maintained in such manner as to permit a ready analysis of the charges and credits thereto.

81. APPROPRIATED EARNED SURPLUS.

(A) This account shall include the total of the net balances of appropriation of income and earned surplus for the acquisition of capital assets, the retirement of debt, sinking and redemption funds, and all other appropriations specifically set aside in the hands of trustees, as well as appropriations for which no specific investment or segregation of assets has been made. It shall also include accretions to the assets held in the special funds.

(B) A subdivision of this account shall be maintained by classes of appropriations, the titles of

which shall indicate the purpose for which the appropriations were made.

612 82. EARNED SURPLUS.

(A) This account shall include the net balance (debit or credit) of the amounts included in accounts 301 to 317, inclusive. It shall not include transfers either to or from account 80, "Unearned surplus, unless so authorized upon application to the Commission.

(B) The balance of accounts (301 to 317, inclusive) shall be closed into this account at the end of each calendar year.

(37) Add the following paragraph to the text of account 101, 151, 171, "Land":

(G) The cost of clearing, filing, and leveling land incurred in advance of the construction of facilities thereon, and directly related to land owned outright, shall be included in this account.

(38) Add the following note to account 101, 151, 171, "Land":

Note H.—The cost of clearing, leveling or grading land, both before and after the construction of facilities thereon, but directly related to such facilities, shall be included in the accounts provided for the cost of the facilities constructed.

(39) Add the following to the text of account 102, 152, "Rights-of-way":

It shall also include the cost of clearing, filling, and leveling right-of-way, over which the carrier has been granted an easement or which is held under perpetual lease, in advance of the construction of facilities thereon.

(40) Add the following note to account 102, 152, "Rights-of-way":

Note C.—The cost of clearing, leveling, or grading right-of-way, both before and after the construction of facilities thereon, but directly related to such facilities, shall be included in the accounts provided for the cost of the facilities constructed.

(41) Add the following to the text of account 103, 153, "Line pipe":

including oil-line pipe laid between pumping-station manifolds and oil storage tanks, also oil-line pipe extending into scraper pits.

613 (42) Modify the second paragraph of the text of account 105, 155, "Pipe-line construction," to read as follows, and add the following notes thereto:

It includes items used in the protection of oil-pipe lines applied directly to or around the pipe, such as casing pipe and vent lines, concrete, bituminous coatings, etc., and teaming and labor expended in excavating, connecting up pipe lines and back filling. It also includes the construction of scraper or other pipe line pits which do not include an above-ground building and the damages to crops and timber and other damages incident to construction of pipe lines.

Note A.—If a project involving the construction of scraper or other pipe line pits, includes an above-ground building, the cost of constructing the pit and building, including material and labor, shall be charged to account 106, 156, 176, "Buildings." In the construction of such pits, whether or not they include an above-ground building, the cost of the line pipe extending into the pit shall be included in account 103, 153, "Line pipe," the cost of the fitting shall be included in account 104, 154, "Line-pipe fittings," and the labor installing the pipe and fittings shall be included in this account. (For station manifolds see account 110, 160.)

Note B.—The cost of reopening the trench and backfilling subsequent to original construction, for the purpose of applying protection and easing shall be charged to account 602, 652, 752, "Repairs of pipe lines."

(43) Add the following to the text of account 106, 156, 176, "Buildings":

Where the construction of scraper or other pipe line pits, includes an above-ground building, this account shall also include the cost of constructing the pit and the building including material and labor. (See account 105, 155.)

(44) Add the following to the text of account 110, 160, "Other station equipment":

It shall also include the carrier's investment in tracks if located at and used in connection with a station.

614 (45) Substitute the following for the second paragraph of the text of account 112, 162, "Delivery facilities":

It shall also include the cost of engines, pumps, and boilers at loading racks and on wharves, the construction of oil-pipe lines between oil tanks and delivery facilities, and the carrier's investment in tracks if located at and used in connection with delivery facilities.

(46) Substitute the following for the text of account 115, 165, 185, "Vehicles and other work equipment":

This account shall include the cost of motor and other vehicles, motor and other portable work equipment, garage equipment, and portable tools and machines such as drills, hoists, jacks, power mowers, stocks and dies, laying tongs, vises, air compressors, welding machines, valve reseating machines, pipe-cleaning machines and concrete mixers, not specifically provided for in other accounts.

(47) Modify the text account 192, "Unadjusted investments," to read as follows:

192. UNADJUSTED INVESTMENTS.

This account shall include the difference between the total amount of the carrier's investment as stated in account 1, "Investment in carrier property," and the sum of the amounts transferred to property accounts 101 to 191, inclusive, in setting up the accounting records to meet the requirements of this system of accounts. (See instruction 1-E-5.)

(48) Add the following account:

193. ACQUISITION ADJUSTMENT.

(A) This account shall include the difference between (a) the cost of the accounting company of pipe-line property acquired by purchase and (b) the amount distributed to the primary property accounts. (See instruction 34.)

(B) This account shall also include the difference between the assets acquired (accounts 1 to 28, inclusive) and the par or recorded value of the accounting company's capital stock plus its debts and other liabilities (accounts 51 to 79, inclusive), in respect of pipe-line property acquired in reorganization under the circumstances set forth in instruction 30.

615 (C) Any balance remaining in this account after making the entries provided for under paragraphs (A) or (B) shall be subject to such ultimate disposition as the Commission may direct.

(49) Modify the parenthetical phrase in the text of account 301, "Income balance," to read as follows:
(401 to 423, inclusive)

(50) Modify the text of account 304, "Miscellaneous credits," by eliminating the list of items and substituting the following list therefor:

Adjustments or cancelations of balance sheet accounts not relating to operating revenue, operating expenses, or income accounts.

Cancelation of balance sheet accounts representing unclaimed wages and vouchered accounts written off because of inability to locate the creditor.

Credits resulting from adjustments required to bring to par funded debt securities issued or assumed by the carrier and reacquired at a cost less than par value.

Items erroneously collected and retained on account of inability to make refund.

Profit derived from sale of investment securities. (See account 79, "Reserve for adjustment of investment in securities.")

Profit derived from sale of property carried in account 5, "Miscellaneous physical property."

Profits from the sale of oil, the cost of which is carried in account 3, "Operating oil supply."

Sale of mineral deposits on property, when value thereof was not considered in purchase price of property.

Unreleased premium on funded debt reacquired before maturity.

(51) Cancel account 313, "Uncollectible pipe-line revenue."

616 (52) Modify the text of account 314, "Miscellaneous debits," by eliminating the list of items and substituting the following list therefor:

Adjustments and cancelations of balance sheet accounts not relating to operating revenue, operating expense, or income accounts.

Debits resulting from adjustments required to bring to par funded debt securities issued or assumed by the carrier and reacquired at a cost exceeding par value.

Discount on stock remaining unextinguished at time of its reacquirement, resale, or retirement, if in excess of the pro rata portion includible in unearned surplus.

Losses resulting from sale or adjustment of investment securities. (See instruction 23.)
Losses resulting from sale, destruction, or retirement of property carried in account 5, "Miscellaneous physical property."
Losses from the sale of oil, the cost of which is carried in account 3, "Operating oil supply."
Penalties and fines for violations of the Interstate Commerce Act or other Federal Laws.
Unextinguished discount on funded debt reacquired before maturity.

(53) Modify the text of account 315, "Miscellaneous reservations of surplus," to read as follows:

315. MISCELLANEOUS RESERVATIONS OF SURPLUS.

This account shall include amounts definitely reserved from surplus for purposes not provided for elsewhere. Appropriations charged to this account shall be credited to account 81, "Appropriated earned surplus."

(54) Cancel account 402, "Rent from lease of pipe-line property."

(55) Cancel paragraphs (B) and (C) of the text of account 406, "Interest income."

617 (56) Add the following to the list of items for account 409, "Miscellaneous income":

Extinguishment of premium on funded debt securities of others owned by the accounting company. (See instruction 23.)

(57) Add the following to the list of items for account 415, "Miscellaneous income charges":

Amortization of discount on funded debt securities of others owned by the accounting company. (See instruction 23.)
Normal and additional income taxes upon interest on the accounting company's funded debt when assumed by it.

(58) Modify the text of account 420, "Miscellaneous reservations of income," to read as follows:

420. MISCELLANEOUS RESERVATIONS OF INCOME.

This account shall include amounts definitely reserved from income for purposes not provided for elsewhere. Appropriations charged to this account shall be credited to account 81, "Appropriated earned surplus."

(59) Add the following account:

423. BAD DEBTS.

This account shall be charged with receivables, which after a reasonably diligent effort to collect, are determined to be uncollectible.

(60) Cancel the text of account 503, 553, "Rent revenues," and substitute the following therefor:

503, 553, RENT REVENUES.

(A) This account shall include revenues from the rental or subrental of carrier property by the accounting company to others.

(B) The maintenance (repairs and depreciation) of carrier property the rent from which is includible in this account shall be charged thereto, if assumed by the accounting company, and if separable from the maintenance of other pipe-line property operated by the carrier.

618 Note A.—Taxes on leased carrier property, shall be charged to account 412, "Pipe-line taxes," by the lessor.

Note B.—The rent from property, the cost of which is includible in account 5, "Miscellaneous physical property," shall be included in account 404, "Income from miscellaneous nonoperating physical property."

(61) Add the following to the text of account 504, 554, "Miscellaneous revenue":

including amounts realized from the sale of oil accumulated as the result of allowances in tariffs to cover shrinkage, etc.

(62) Insert the words "less than a unit of" after the word "kind" in the text of account 602, 652, 752, "Repairs of pipe lines."

(63) Substitute the following for the parenthetical clause in the text of paragraph (B) of account 613, 663, 763, "Depreciation":

(See also instruction 8-E and account 75, "Amortization reserve.")

(64) Modify the text of account 637, 687, 787, "Stationery and printing," to read as follows:

637, 687, 787, STATIONERY AND PRINTING.

This account shall include the cost of postage, stationery, and stationery supplies used by all departments, including cost of printing reports, blanks, etc., except cost of printing briefs, legal forms, testimony, reports, etc., used in legal proceedings. (See account 633, 683, 783.)

(65) Cancel paragraph (B) of the text of account 640, 690, 790, "Operating rents," and add the following note to that account:

Note B.—Taxes on leased carrier property shall be charged to account 412, "Pipe-line taxes," by the lessor.

(66) Modify the following accounting units of property of pipe-line companies listed under appendix A to read as follows:

619 103, 153, LINE PIPE.

1500 feet of pipe 6 inches in diameter or larger contained in a continuous section.

3000 feet of pipe of less than 6 inches in diameter contained in a continuous section.

104, 154, LINE-PIPE FITTINGS.

Fittings for pipe-lines 6 inches or more in diameter contained in a continuous section of 1500 feet of line pipe.

Fittings for pipe-lines less than 6 inches in diameter contained in a continuous section of 3000 feet of line pipe.

105, 155, PIPE-LINE CONSTRUCTION.

The construction cost pertaining to a unit of line pipe.

620 At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 22nd day of January A. D. 1945.

PIPE LINES—UNIFORM SYSTEM OF ACCOUNTS

The "Uniform System of Accounts for Pipe Lines" (Part 20 of Title 49, Code of Federal Regulations) being under consideration by the division, pursuant to authority of Section 20 of the Interstate Commerce Act, and the division having found modifications necessary for administration of Part I of the act:

IT IS ORDERED, That the texts of accounts previously prescribed be modified as follows:

1. *Account 70. Liability for Provident Funds.*

Eliminate the words "specific appropriations of income or surplus and" from the first sentence of the text.

2. *Account 72. Insurance Reserve.*

Cancel paragraph (A) of the text and change the designations of paragraphs (B), (C), and (D) so that they will be paragraphs (A), (B), and (C), respectively.

IT IS FURTHER ORDERED, That this order shall become effective March 1, 1945, but may be given retroactive effect to January 1, 1945; and

IT IS FURTHER ORDERED, That a copy of this order shall be served upon every carrier by pipe line subject to the act and upon every trustee, executor, administrator, receiver, or assignee of any such pipe line carrier, and that notice of this order be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register, The National Archives.

By the Commission, Division 1.

W. P. BARTEL
Secretary

(SEAL)

621 TITLE 49—TRANSPORTATION AND RAILROADS

CHAPTER 1—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 20—PIPE LINE COMPANIES: UNIFORM SYSTEM OF ACCOUNTS

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held in its office in Washington, D. C., on the 22nd day of April A. D. 1946.

The "Uniform System of Accounts for Pipe Lines" being under consideration by the division, pursuant to authority of section 20 of Part I of the Interstate Commerce Act and the modifications and amendments attached hereto and made a part hereof being found necessary for the administration of Part I of the Act, it is ordered, That

1. All carriers by pipe line subject to Part I of the Interstate Commerce Act, and every receiver, trustee, executor, administrator, or assignee of any such carrier, shall comply with the "Uniform System of Accounts for Pipe Lines," as hereby modified and amended;

2. This order shall become effective January 1, 1947; and

3. A copy of this order shall be served upon every carrier by pipe line subject to Part I of the Act, and upon every receiver, trustee, executor, administrator, or assignee of any such carrier and notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C.,

and by filing it with the Director of the Division of the Federal Register.

By the Commission, Division 1.

(SEAL) W. P. BARTEL
Secretary

622 MODIFICATIONS OF THE UNIFORM SYSTEM OF ACCOUNTS FOR PIPE LINES

1. GENERAL INSTRUCTIONS.

(A) *Instruction 4. Delayed items.*

In the first sentence of paragraph (B) cancel the word "surplus" and substitute therefor:

the delayed income accounts

(B) *Instruction 41. Purpose of earned surplus accounts.*

In section "c" cancel the words "attributable to the period" and substitute therefor:

includible in income

2. EARNED SURPLUS ACCOUNTS.

Account 303. Delayed income credits
" 311. Delayed income debits

Cancel the numbers, titles, texts, and notes.

3. INCOME ACCOUNTS.

Add the following accounts:

(A) *410. Delayed income credits.*

This account, which may be used only after permission of this Commission has been obtained, shall include delayed credit items and adjustments for which no provision has previously been made, relating to operating revenues, operating expenses, and income arising during the current year which are applicable to prior years and which are relatively so large that their inclusion in the accounts appropriate for current items of the same class would seriously distort those accounts for the year. (See also instruction 4.)

Note.—All entries in this account shall be made in such detail as will indicate the operating-revenue, operating-expense, or income accounts to which they relate.

623 (B) *424. Delayed income debits.*

This account, which may be used only after permission of this Commission has been ob-

tained, shall include delayed debit items and adjustments for which no provision has previously been made, relating to operating revenues, operating expenses, and income arising during the current year which are applicable to prior years and which are relatively so large that their inclusion in the accounts appropriate for current items of the same class would seriously distort those accounts for the year. (See also instruction 4.)

Note.—All entries in this account shall be made in such detail as will indicate the operating-revenue, operating-expense, or income accounts to which they relate.

4. FORM OF INCOME STATEMENT.

(A) *Section II. Other Income.*

After "409. Miscellaneous income," insert:

410. Delayed income credits.

(B) *Section III. Miscellaneous Deductions from Total Income.*

After "423. Bad debts," insert:

424. Delayed income debits.

624 TITLE 49—TRANSPORTATION AND RAILROADS

CHAPTER I—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 20—PIPE LINE COMPANIES: UNIFORM SYSTEM OF ACCOUNTS

ORDER

At a session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 23rd day of December A. D. 1946.

The matter of modifying the "Uniform System of Accounts for Pipe Lines," being under consideration by the division pursuant to the provisions of Section 20 of the Interstate Commerce Act and the modifications which are attached hereto and made a part hereof being deemed necessary for administration of the provisions of Part I of the Act (54 Stat. 917, 49 U. S. C. 20(3));

It is ordered, that:

(1) Any interested party may on or before February 1, 1947, file a written statement with the Commission's Secre-

tary setting forth reasons why the modifications should not become effective as hereinafter ordered and request oral argument thereon, which argument will be granted if the reasons be substantial; and,

(2) Unless otherwise ordered upon consideration of such objections, the said modifications in the "Uniform System of Accounts for Pipe Lines," shall become effective March 1, 1947; and,

(3) A copy of this order shall be served upon every carrier by pipe line subject to the Act and upon every trustee, receiver, executor, administrator, or assignee of any such carrier, and that notice of this order be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

By the Commission, Division 1.

(SEAL)

W. P. BARTEL
Secretary

625 MODIFICATIONS OF THE UNIFORM SYSTEM OF ACCOUNTS FOR PIPE LINES

1. GENERAL INSTRUCTIONS.

(A) *Instruction 2. Definitions.*

Add the following to the note to paragraph (Y):

(This does not apply to oil-line pipe and line-pipe fittings.)

(B) *Instruction 38. Retirements and replacements.*

Substitute the following for the note to paragraph (C):

Note.—The book cost of pipe-line construction applicable to a unit of oil-line pipe retired shall be credited to account 105, 155, and charged to account 74.

If the retired oil-line pipe is replaced with other pipe in the same location, the cost of opening and back-filling the trench, together with the cost of hauling, laying, and connecting the pipe and other cost of pipe line construction, shall be charged to account 105, 155. The cost of taking out the retired pipe shall be accounted for as cost of recovering the salvage. The cost of reconditioning of oil-line pipe shall be accounted for as repairs and not

as retirements and replacements. (See instruction 75(B)(1) and the note thereto.)

If the retired oil-line pipe is not replaced in the same location, the cost of opening and back-filling the trench from which the pipe is taken, together with the cost of taking out the pipe, shall be accounted for as cost of recovering the salvage.

(C) *Insert the following instruction:*

39. Relocations. Where a pipe line is relocated, the same size of oil-line pipe being used, and the relocated line continues to serve the same lease or purpose, the cost of the relocation, regardless of whether or not a unit of line pipe is involved, shall be charged to account 602, 652, and no adjustment shall be made of property accounts except to the extent that the pipe line is shortened or lengthened.

626 (D) *Instruction 75.*

(a) In the parenthesis at the end of paragraph (B) (1), change "instruction" to "instructions" and insert "and 39" after "38".

(b) Insert the following note after paragraph (B) (1):

Note.—Reconditioning of oil-line pipe shall be accounted for as repairs regardless of whether the pipe is reconditioned at the trenches or is removed to a central location for that purpose; also, changes in the method of joining the pipe, such as conversion from screw end to plain end welded pipe, shall be treated as part of the reconditioning cost.

2. Operating Expense Accounts.

(A) *Account 602, 652, 752. Repairs of pipe lines.*

Add the following to the first sentence of the text: also the cost of relocating oil-pipe lines.

(B) *Account 603, 653, 753. Changing of line construction.*

Cancel the numbers, titles, and text.

627

Regulations to Govern the Destruction of Records of Carriers by Pipe Lines Prescribed by the Interstate Commerce Commission

In accordance with Section 20 of the Interstate Commerce Act

Issue of 1943
Effective on January 1, 1943
(Supersedes previous issue)

628

The Interstate Commerce Commission

Division 1

Charles D. Mahaffie
Claude R. Porter
William E. Lee
W. P. Bartel, *Secretary.*

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630 ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 25th day of November, 1942.

PIPE LINES—REGULATIONS TO GOVERN THE DESTRUCTION OF RECORDS.

The matter of the Regulations to Govern the Destruction of Records of Carriers by Pipe Lines to be prescribed for and kept by pipe lines being under consideration by the Division, pursuant to the authority of section 20 of the Interstate Commerce Act, and upon consideration of the matters and things involved, and the Division having found that the Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, issue of 1943, hereto attached and made a part hereof, are necessary for purposes of administration of the provisions of part 1 of the Act.

IT IS ORDERED:

TITLE 49 —TRANSPORTATION AND RAILROADS
CHAPTER I —INTERSTATE COMMERCE COMMISSION
SUBCHAPTER A—GENERAL RULES AND REGULATIONS
PART 115 —RECORDS OF PIPE LINE COMPANIES

§ 115.0 *Regulations prescribed.* (a) Every carrier by pipe line subject to the provisions of the Interstate Commerce Act, and every trustee, executor, administrator, or assignee of any such pipe line carrier, are hereby required to comply with the Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, issue of 1943, in the destruction and retention of their operating, accounting and financial papers, records, books, blanks, tickets, stubs, and documents of carriers by pipe lines.

(b) *Effective date and supersedure.* The issue of 1943 Regulations to Govern the Destruction of Records of Car-

riers by Pipe Lines, shall become effective on January 1, 1943, and the order and regulations issued and prescribed June 28, 1915, shall thereupon be canceled and superseded.

AND IT IS FURTHER ORDERED, That a copy of this order and the Regulations to Govern the Destruction of Records of Carriers by Pipe Lines herein prescribed shall be served upon every pipe line carrier subject to the Act and every trustee, executor, administrator, or assignee of any such pipe line carrier, and that notice of this order be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register, The National Archives.

By the Commission, Division 1.

(SEAL)

W. P. BARTEL
Secretary

631 TITLE 49 —TRANSPORTATION AND RAILROADS

CHAPTER I —INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 115 —RECORDS OF PIPE LINE COMPANIES

Sec.

115.1 Authority to destroy certain records.
115.2 Preservation of other records; special permission to destroy.
115.3 Officer having supervision of destruction.
115.4 Written authority of officer having supervision of destruction.
115.5 Certificates of destruction.
115.6 Committee for destruction of certain records.
115.7 Method of destruction.
115.8 Accidental destruction of accounts, records, and memoranda.
115.9 Duplicate accounts, records, and memoranda.
115.10 List of accounts, records, and memoranda authorized to be destroyed, and periods of retention.

AUTHORITY: Section 115.1 to 115.10 inclusive, issued under 24 Stat. 386, 34 Stat. 593, 41 Stat. 493, 46 Stat. 251, 49 Stat. 543, 54 Stat. 916; 49 U. S. Code 20.

632 SPECIAL NOTE

The following extract from section 20 of the Interstate Commerce Act is here quoted for convenient reference thereto by carriers:

Any person who shall knowingly and wilfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or who shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, lessor, or person, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall knowingly or willfully file with the Commission any false report or other document, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment: *Provided*, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of such carriers, lessors, or other persons as may, after a reasonable time, be destroyed, and prescribing the length of time the same shall be preserved.

The regulations set forth in this order pertain only to the accounts, records, and memoranda named or described herein. All accounts, records, and memoranda not indicated in the regulations remain under the prohibition of destruction contained in section 20 of the act.

It is not intended that these regulations shall be interpreted as requiring that the records herein named shall be installed, when such records are not already kept by a carrier. The following Regulations to Govern the Destruction of Records of Carriers by Pipe Lines subject to the Interstate Commerce Act are in lieu of Part 110, Subpart F, and Part 115 of Title 49, Code of Federal Regulations.

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Regulations to Govern the Destruction of Records of Carriers by Pipe Lines

§ 115.1—*Authority to destroy certain records.* Each and every carrier by pipe line subject to Part I of the Interstate Commerce Act and each and every trustee, executor, administrator or assignee of any such carrier, is permitted to destroy the accounts, records, and memoranda named or described in these regulations, after preserving the same for the periods of time respectively specified and upon complying with the requirements of the regulations.

§ 115.2—*Preservation of other records; special permission to destroy.* (a) All accounts, records, and memoranda of such carriers, other than those the destruction of which is permitted in the said regulations, shall remain under the prohibition of destruction contained in section 20 of the Interstate Commerce Act as amended: (b) However, in case any such carrier desires to destroy any accounts, records, or memoranda other than those hereinafter named it may petition the Commission to that effect, exhibiting a full and detailed description of the accounts, records, or memoranda in question, clearly explaining their character, their use, and their purpose; it being understood that any order entered by the Commission on any such petition shall, unless otherwise provided, be limited in its force and effect to the particular carrier presenting such petition.

§ 115.3—*Officer having supervision of destruction.* (a) Supervision of the destruction of accounts, records, and memoranda shall be assigned to an officer appointed by the board of directors or, if the carrier's organization shall require it, to two officers so appointed. Such officer or officers may be given (1) general supervision of the destruction of all accounts, records, and memoranda the destruction of which is permitted by these regulations, or (2) authority over the destruction of such of these accounts, records, and memoranda as may be specified by the board of directors. A copy of the resolution of appointment shall be filed with the Commission before the destruction of any of the accounts, records, or memoranda involved. Pending action by the board of directors, an appointment by an executive committee, or by a similarly authorized committee of the board of directors, shall have the same effect as if made by the board of directors.

634 (b) If the property of a carrier is in the hands of a trustee, executor, administrator, or assignee, the officer or officers to have supervision of the destruction of accounts, records, and memoranda shall be designated by

the trustee, executor, administrator, or assignee. A copy of the order designating such officer or officers shall be filed with the Commission before the destruction of any of the accounts, records, or memoranda involved.

(c) In designating an officer to have general supervision of the destruction of accounts, records, and memoranda it would be preferable to designate by title only, rather than by name and title, and thus obviate the necessity of filing a new resolution each time a successor in the office is appointed.

§ 115.4—*Written authority of officer having supervision of destruction.* (a) When any accounts, records, or memoranda are to be destroyed, an officer having supervision of the destruction of accounts, records, or memoranda (as designated in compliance with § 115.3 (a) and § 115.3 (b)) shall issue a written authority naming the person or persons by whom the accounts, records, or memoranda are to be destroyed (except as provided for in § 115.9).

(b) The written authority (1) may be confined to certain accounts, records, and memoranda which have been retained for the periods of time specified in these regulations and which the carrier then desires to destroy, in which case it shall indicate—

First. A list of the accounts, records, or memoranda to be destroyed, expressed either in form numbers or by descriptive titles; and

Second. The period or periods covered by the accounts, records, or memoranda the destruction of which is authorized;

or (2) may be of continuing effect, applying to any or all the accounts, records, and memoranda named herein as the periods of retention of such accounts, records, or memoranda attain the limits specified herein.

(c) Such written authority, or a certified copy thereof, shall be filed in the office of the issuing officer as a permanent part of the carrier's records. It is not required that copies of the written authorities be filed with the Commission.

§ 115.5—*Certificates of destruction.* (a) The person or persons upon whom devolves the duty of the direct supervision of the destruction of the accounts, records, or memoranda under the authority referred to in § 115.4 (b) shall make certificate (except as provided for in § 115.5 (d) and § 115.9) setting forth that the accounts, records, or memoranda listed in the said authority have been destroyed and that no other accounts, records, or memoranda than those so listed have been destroyed therewith.

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(b) If an authority as referred to in § 115.4 (b) is given, a certificate of destruction shall be made listing either by form numbers or descriptive titles the accounts, records, and memoranda destroyed, naming the period or periods covered by the accounts, records, or memoranda, and stating that no other accounts, records, or memoranda than those so listed have been destroyed therewith. Either (1) a separate certificate shall be made each time any accounts, records, or memoranda are destroyed, or (2) cumulative certificates shall be made with entries each time any accounts, records, or memoranda are destroyed.

(c) Certificates of destruction shall be forwarded promptly to the officer having supervision of the destruction of accounts, records, and memoranda who issued the written authority and shall be retained in his office as a permanent part of the carrier's records. In case cumulative certificates are made they shall be forwarded to such officer periodically, but at least once every 6 months. It is not required that copies of the certificates of destruction be filed with the Commission.

(d) Certificates of destruction need not be made for accounts, records, and memoranda, the destruction of which, in the list in § 115.10 hereof, is made optional with the carrier, but a written authority, either for specific records or of continuing effect (except as provided for in § 115.9), shall be issued by the officer having supervision of the destruction of such accounts, records, and memoranda.

§ 115.6—*Committee for destruction of certain records.* At the option of the carrier the board of directors may from time to time name a committee to destroy canceled stock certificates, bonds, or other records covered by item B-3 of § 115.10 in lieu of delegating the authority for the destruction to an officer, as provided in § 115.3 (a). A copy of the resolution of the board of directors naming such committee shall be filed with the Commission before the destruction of any of the records involved, and a certificate of destruction shall be permanently retained by the carrier. Certificates of destruction giving full descriptive reference to the documents destroyed shall be made by the person or persons appointed by the officer having supervision of the destruction of records or by this committee. When documents represent debt secured by mortgage, the certificates of destruction shall also be authenticated by representatives of the trustees acting in conjunction with this committee or shall have the trustees' acceptance thereon.

636. § 115.7—*Method of destruction.* (a) The precise method of the destruction of accounts, records, or

memoranda is not prescribed. The Commission is not concerned with the method of destruction, whether by fire, sale or otherwise, so long as the destruction is authorized and a certificate of destruction is filed as required by these regulations.

(b) If the accounts, records, and memoranda are not actually destroyed by the carrier, but are disposed of by sale or otherwise, the certificate of destruction shall so state. Attention is called to section 15 of the Interstate Commerce Act, which provides that a carrier shall not divulge to any person information concerning the business of a shipper or consignee which may be used to the detriment of such shipper or consignee. Responsibility for possible infringement of this provision of the law by disposing of its records by other than actual destruction would rest with the carrier.

§ 115.8—*Accidental destruction of accounts, records, and memoranda.* If any accounts, records, or memoranda are destroyed accidentally by fire, flood, or other casualty a statement shall be prepared listing so far as may be possible the records destroyed and detailing the circumstances in connection with the fire or other casualty. This statement shall be authenticated by an officer or some responsible employee of the company and shall be filed with the officer having supervision of the destruction of accounts, records, and memoranda. A copy of the statement shall be filed promptly with the Commission.

§ 115.9—*Duplicate accounts, records, and memoranda.* Provision is made in item P-3 of § 115.10 for the optional destruction of duplicate copies of accounts, records, and memoranda when such copies are not specifically provided for elsewhere in these regulations and when they contain no information not shown on the originals. In destroying such copies carriers may dispense with the written authorities and the certificates of destruction. The originals (or one true copy) shall be retained for the respective periods named for such records in the regulations.

§ 115.10—*List of accounts, records, and memoranda, and periods of retention.* The following list is indicative of accounts, records, and memoranda of carriers by pipe lines specifically referred to by the regulation embodied in § 115.1. The classification of the accounts, records, and memoranda enumerated below under the various general headings is merely for convenient reference and is more or less arbitrary. The regulations are intended to apply to the items as named or described, regardless of the classification and regardless of where filed. Of the accounts, records, and memoranda which are to be retained permanently only the

more important are indicated in the list, such specific mention being made so that they may not be confused with any accounts, records, or memoranda which the carrier is hereby given permission to destroy.

637 DESTRUCTION OF RECORDS

Record Titles and Descriptions	*Period to be Retained*
A—ADMINISTRATIVE AND CORPORATE.	
1. Incorporation and Reorganization Records:	
Records, documents and files pertaining to the incorporation and reorganization of pipe line companies.	Permanently.
2. Appointments of Registered Agents:	
Documents and files pertaining to the appointment of registered agents in states in which the carrier is authorized to do business.	Permanently.
3. Minute Books:	
Minute books of directors', executive committees', stockholders' and other meetings.	Permanently.
4. Authorization for Security Issues:	
Copies of applications to and authorizations from regulating bodies for the issuance of stocks, bonds and other securities.	Permanently.
5. Voting Securities:	
a. Proxies of holders of voting securities.	2 Years.
b. Lists of holders of voting securities.	5 Years.
6. Contracts and Agreements:	
a. Card or book records of contracts, leases, and agreements made, and of expirations, and of renewals.	Permanently.
b. Power and fuel contracts.	1 Year after expiration of contract.
c. Telephone, telegraph and leased wire contracts.	6 Years after expiration of contract.
d. Leases of property, other than land, by or from carrier.	6 Years after expiration of lease.
e. Maintenance service contracts for office machines and equipment.	1 Year after expiration of contract.

Record Titles and Descriptions	*Period to be Retained*
A—ADMINISTRATIVE AND CORPORATE—continued.	
6. Contracts and Agreements—continued.	
f. Contracts, leases and agreements not provided for elsewhere in these regulations.	Statute of limitations after fulfillment or expiration of contract.
7. Fidelity Bonds: Records and files of fidelity bonds of employees.	3 Years after expiration of coverage.
8. Telegraph and Cable Code Books: Code and cipher books for telegraph and cable purposes (file copy only).	Permanently.
B—TREASURY.	
1. Capital Stock Records:	
a. Records of, or stubs of, capital stock certificates.	Optional after compliance with § 115.6 of text.
b. Stockholders' signature cards.	Optional.
c. Capital stock transfer registers or journals.	Optional after compliance with § 115.6 of text.
d. Orders from stockholders to pay dividends to others.	Until order rescinded.
e. Bills of sale, correspondence, or memoranda concerning transfer of capital stock.	3 Years.
f. Receipts for capital stock certificates.	3 Years.
g. Dividend lists of stockholders.	Optional after compliance with § 115.6 of text.
h. Capital stock subscription notices and requests for allotment.	1 Year.
i. Contracts and correspondence relating to treasury stock.	Optional after compliance with § 115.6 of text.

Record Titles and Descriptions	*Period to be Retained*
B—TREASURY—continued.	
1. Capital Stock Records—continued.	
j. Escrow agreements for capital stock held in escrow.	Optional after compliance with § 115.6 of text.
k. Cancelled capital stock certificates.	Optional after compliance with § 115.6 of text.
2. Security Bond Records:	
a. Registered security bond ledgers and journals.	Optional after compliance with § 115.6 of text.
b. Records or stubs of security bonds.	Optional after compliance with § 115.6 of text.
c. Bills of sale, correspondence, or memoranda concerning transfer of registered security bonds.	3 Years.
d. Records of security bond interest coupons paid and unpaid.	3 Years.
e. Funded debt subscription notices and requests for allotment.	1 Year.
f. Cancelled security bonds, paid interest coupons, and unissued security bonds.	Optional after compliance with §115.6 of text.
3. Retired Securities: Stock certificates, bonds, notes, interest coupons, receiver's certificates, and temporary certificates taken up and cancelled.	Optional after compliance with § 115.6 of text.
4. Records of Securities Owned: Records of outside or affiliated companies' securities owned, whether in treasury or with custodians.	Permanently.
5. Cashbooks: General and auxiliary cashbooks.	10 Years.
NOTE.—If any receipts or payments are entered in the aggregate in the general cashbook and are detailed only on loose sheets,	

Record Titles and Descriptions	*Period to be Retained*
B—TREASURY—continued.	
5. Cashbooks—continued.	
NOTE—continued.	
such loose sheets constitute an auxiliary cashbook when no permanent records of the items thereon is made.	
6. Statements of Funds and Deposits:	
a. Statements and summaries of cash balances on hand and with depositaries.	3 Years.
b. Authorities for and statements of transfer of funds from one depositary to another.	3 Years.
c. Periodical statements of working cash balances.	3 Years.
7. Records of Accounts with Depositaries:	
a. Bank statements from depositaries of funds received, disbursed and transferred showing interest, if any, allowed on average balances.	3 Years.
b. Bank deposit books.	3 Years.
c. Check registers, stubs, duplicates or other records of checks or drafts issued.	3 Years.
d. Duplicate deposit slips.	3 Years.
e. Debit and credit slips received from depositaries.	3 Years.
f. Canceled checks and drafts (other than pay roll checks).	3 Years.
g. Correspondence and memoranda relating to endorsements, issuance of duplicates, forgeries, stoppage of payment, missing signatures and erroneous dating or preparation of checks or drafts.	3 Years.
h. Copies of check signature authorizations filed with depositaries.	3 Years after cancelation of authorization.

Record Titles and Descriptions	*Period to be Retained*
B—TREASURY—continued.	
7. Records of Accounts with Depositories—continued.	
i. Statement of reconciliations of accounts with depositaries, showing outstanding checks and drafts issued but not paid.	3 Years.
j. Statements of funds impounded in closed banks or other depositories.	3 Years after liquidation of depository.
k. Correspondence, claims and memoranda relating to funds impounded in closed banks or other depositories.	3 Years after liquidation of depository.
8. Records of Cash Receipts and Disbursements:	
a. Daily statements of memoranda detailing cash receipts and disbursements which are not detailed in the general or auxiliary cash books.	3 Years.
b. Daily statements or memoranda detailing cash receipts and disbursements which are detailed in the general or auxiliary cash books.	3 Years.
c. Periodical statistical statements of receipts and disbursements of cash showing number of checks, drafts, etc., issued.	3 Years.
d. Cash remittance reports of employee-custodians.	3 Years.
e. Requisitions on parent or holding company for cash.	3 Years.
f. Daily or other periodical statements or memoranda detailing sources of receipts of cash transferred to other departments of the carrier or to its parent company.	3 Years.
9. Working or Petty Cash Funds:	
a. Statements of receipts, disbursements, and balances of working or petty cash funds in hands of employee-custodians.	3 Years.
b. Correspondence and memoranda relating to working or petty cash funds in hands of employee-custodians.	3 Years.

Record Titles and Descriptions	*Period to be Retained*
C—FINANCIAL ACCOUNTING.	
Whether the carrier's accounting system is conducted by bookkeeping machine, tabulating machine, or other mechanical device, or by manual method, in whole or in part; whether the record is kept in bound books, loose-leaf books, run sheets, loose-leaf files, card or ticket files, the record corresponding to the following phraseology is intended.	
1. Ledgers:	
a. General and auxiliary ledgers and indexes thereto, containing account totals by primary account subdivisions as defined in Uniform System of Accounts for Pipe Lines, prescribed by this Commission.	Permanently.
b. Auxiliary ledgers of detailed transactions in receivable, payable and deferred accounts; location or other subdivisions of revenue and expense accounts and similar subsidiary details not included in C-1a above.	10 Years.
2. Journals:	
General and auxiliary journals, combination journals and voucher registers, and voucher registers.	10 Years.
3. Clearing or Apportionment Books:	
Book records of costs of operations incidental or subsidiary to pipe line operations such as automotive transportation, camps, telephone and telegraph systems, roads, shop and storehouse operations which are apportioned or allocated to the major operations of the carrier according to the use made of the facilities, including supporting memoranda showing basis of distribution and authorizations or other papers relating to the opening of clearing or apportionment accounts.	6 Years.

Record Titles and Descriptions	*Period to be Retained*
C—FINANCIAL ACCOUNTING—continued.	
4. Vouchers, Cash and Journal:	
Vouchers, the source of all entries in the carrier's books, representing acknowledgments of cash received from whatever source, receipts for cash paid out for whatever purpose, and inter-account movements of values.	10 Years.
NOTE.—Different companies have different ideas about what papers should be attached to these vouchers, hence each group of documents, pay rolls, material receipts, storehouse issues, cash receipts, acknowledgments, releases, etc., regardless of filing media, are described individually under corresponding sections of this classification and the period of retention pertaining to each of these shall govern.	
5. Budgets:	
Approved physical capital, financial and operating budgets, forecasts for financing and operating the company during definite future periods and to guide the company's officials and employees in the expenditure of funds, together with work programs, estimates, books, and other records of comparisons between estimated and actual expenditures and correspondence, memoranda and work papers related thereto.	2 Years.
6. Transportation Revenue and Settlement Records.	
a. Records of transportation revenues and of settlements by shippers and by or with participating carriers.	6 Years
b. Records of transportation revenue by movements and points of origin and delivery.	6 Years.

Record Titles and Descriptions	*Period to be Retained*
C—FINANCIAL ACCOUNTING—continued.	
7. Storage and Loading Revenue and Settlement Records:	
Records of revenues derived from storing, loading, and unloading services, and of settlement by shippers.	6 Years.
8. Miscellaneous Revenue Records:	
Records of miscellaneous revenues derived from rental of pipe line property, telephone and telegraph service, and from other miscellaneous sources, and of collection thereof.	6 Years.
9. Routine Billing Records:	
a. Office copies of bills rendered for transportation, materials and supplies sold, work performed for others, etc.	3 Years.
b. Listing sheets controlling the transmission of invoices to other departments of the company and to affiliated companies.	2 Years.
c. Periodical statements of account issued by vendors from whom purchases were made.	2 Years.
d. Abstracts of paid freight and express bills forwarded to the traffic department for examination and verification.	3 Years.
10. Shop Accounts:	
a. Shop orders or requisitions for shop work.	Optional
b. Records reflecting details of cost of each shop job.	6 Years.
c. Records and memoranda supporting the distribution of shop job expenditures.	6 Years.
d. Statistics relating to operating of shops, which are not used in support of book entries.	Optional

Record Titles and Descriptions	*Period to be Retained*
C—FINANCIAL ACCOUNTING—continued.	
11. Stationery:	
a. Requisitions on stock clerk for stationery and office supplies.	1 Year.
b. Card or other records of stationery and office supplies purchased for and used in accounting department offices.	3 Years.
12. Audits:	
a. Audit reports of general audits and surveys made by independent public accountants.	3 Years.
b. Internal audits made by carrier, field audits, departmental audits, office surveys and special reports, reports of inventories of material and supply stocks and verifications and attestations of treasurer's cash funds and securities.	3 Years.
c. Records of audit and reconciliation of working or petty cash funds in hands of employee-custodians.	3 Years.
d. Statements reflecting turnover of cash in working or petty cash funds in hands of employee-custodians.	3 Years.
e. Reports, correspondence and memoranda concerning defalcations by employees.	3 Years.
13. Codes of Accounts:	
a. Records of established codes of accounts and changes therein.	6 Years after discontinuation of code.
b. Correspondence, rulings and interpretations concerning accounting procedure and practices.	6 Years after discontinuation of code.

Record Titles and Descriptions	*Period to be Retained*
D—TAX AND STATISTICAL REPORTS—FEDERAL AND STATE.	
NOTE.—If governing statutes of limitations are of longer periods than those specified in this section or if Federal or State tax laws or regulations by taxing authorities require longer retention, then the schedules, returns, reports and records described in this section shall be retained for the longer periods.	
1. Tax Reports:	
Copies of schedules and returns filed with Federal or State authorities for income and excess profits, capital stock, transportation or pipage, social security, *ad valorem* and any and all other tax purposes, and all records, memoranda and working papers in connection therewith.	6 Years.
2. Oil Transportation Control Records:	
Records and reports, tenders, manifests and other documents covering stocks, and receipts and deliveries of oil required by Federal and State authorities for the purpose of controlling the transportation of crude oil.	6 Years.
3. Reports to Interstate Commerce Commission and Other Regulating Bodies:	
a. Annual report, Form P, (file copies) and supporting papers filed with the report.	Permanently.
b. Other annual financial, operating and statistical reports (file copies) and all supporting papers, memoranda and working papers in connection therewith.	6 Years.

Record Titles and Descriptions	*Period to be Retained*
D—TAX AND STATISTICAL REPORTS—FEDERAL AND STATE—continued.	
3. Reports to Interstate Commerce Commission and Other Regulating Bodies—continued.	
c. Quarterly reports of transportation revenues and number of barrels of oil originated and received from connecting carriers, Form Q.P.S. (file copies).	1 Year after current year.
d. Reports regarding expenditures of proceeds from sale of authorized securities (file copies) and all supporting papers.	6 Years.
e. Engineering field notes, maps and sketches; underlying engineering, land and accounting reports; pricing schedules, summary or collection sheets, yearly reports of changes and other miscellaneous data, all in connection with valuation of the carrier's property by the Interstate Commerce Commission.	Permanently.
f. Statistical and information reports not provided for elsewhere in these regulations.	6 Years.
E—PAY ROLLS AND PERSONNEL.	
1. Pay Roll Records:	
a. Pay rolls and summaries thereof.	Permanently.
b. Applications and authorities for changes in pay rolls.	Optional.
c. Applications for pay roll changes not authorized.	Optional.
d. Records, reports and memoranda concerning the carrier's miscellaneous accounts with employees whether handled thru pay roll accounts or by direct settlement.	2 Years.

Record Titles and Descriptions	*Period to be Retained*
E—PAY ROLLS AND PERSONNEL—continued.	
1. Pay Roll Records—continued.	
e. Receipted pay rolls, endorsed pay checks, receipted time tickets, certificates issued for wages, discharge tickets, and other evidences of payment for services rendered by employees. (See items B-7c and B-7i).	3 Years.
f. Canceled pay checks or drafts drawn in favor of the employee in payment of wages for which receipt is shown on pay rolls or other records retained by the carrier.	Optional.
g. Comparative, analytical or other statistical statements of pay rolls.	Optional.
h. Receipts for pay rolls and pay checks forwarded to agents and others for distribution to employees.	Optional.
i. Pay rolls or other records of annuities or pensions paid to retired employees.	3 Years.
j. Files and records containing assignments, attachments and garnishments of employees salaries or wages, notices of suits, releases and correspondence incident thereto.	3 Years.
k. Timebooks, time cards, time sheets and summaries thereof, time slips, predetermined working schedules, overtime tickets, delayed time tickets, work orders, job tickets, check rolls and other records and papers pertaining to services of officers and employees.	3 Years.
2. Personnel Records:	
a. Applications for employment, qualification records, reports and certificates of physical examinations, efficiency tests, and similar records.	6 Years after employment termination.

Record Titles and Descriptions	*Period to be Retained*
E—PAY ROLLS AND PERSONNEL—continued.	
2. Personnel Records—continued.	
b. Records pertaining to service of employees.	6 Years after employment termination.
c. Applications for employment and replies thereto, not resulting in employment of applicant.	Optional.
F—LANDS AND RIGHTS-OF-WAY.	
1. Land Titles:	
a. Deeds and other papers conveying title to lands held by the carrier; also abstracts of title, maps, and pertinent memoranda in connection therewith.	Statute of limitations after relinquishment of title.
b. Leases of lands by or from the carrier, records of rentals paid and pertinent memoranda in connection therewith.	Statute of limitations after expiration of lease.
c. Documents conveying rights-of-way and franchises to the carrier, as well as book and other records thereof, and also releases from liability for damages to property and persons incident to construction of pipe lines and telephone and telegraph lines and all correspondence and memoranda pertaining thereto.	Statute of limitations after abandonment of right of way.
2. Licenses, Agreements, and Permits:	
a. Licenses or permits granted by federal, state, county, or municipal governments for the crossing by pipe lines and telephone and telegraph lines, of rivers, levees, streams, or other waterways, highways, or streets; copies of corresponding applications, and all book and other records thereof.	Statute of limitations after removal or abandonment of lines.

Record Titles and Descriptions	*Period to be Retained*
F—LANDS AND RIGHTS-OF-WAY—continued.	
2. Licenses, Agreements, and Permits—continued.	
b. Licenses or permits granted by or agreements made with railroad and other transportation agencies for the crossing by pipe lines and telephone and telegraph lines of railroads, canals, or other transportation facilities and all records, correspondence, and memoranda in connection therewith.	Statute of limitations after removal or abandonment of lines.
G—PIPE-LINE PROPERTY.	
NOTE.—All accounts, records, and memoranda requisite for making a complete analysis of the cost of pipe-line property shall be retained for the periods mentioned. If any of the accounts, records, and memoranda elsewhere provided for in these regulations are of this character, they shall be retained for those periods, regardless of any lesser period of retention assigned to them.	
1. Pipe-Line Property Records:	
a. Fixed-plant property ledgers in which are maintained a complete record of the cost or inventory value of all pipe-line property, including retirements and replacements.	Permanently.
b. Construction or AFE ledgers in which are kept a detailed record of the cost of construction of additions, extensions, betterments and replacements of pipe-line property, and detailed costs of major repairs to and dismantlements of existing pipe-line property, which, when completed, are charged to other primary accounts appropriate according to the character of the property.	15 Years, if details have not been transferred to permanent records. 3 Years if transferred to permanent records.

Record Titles and Descriptions	*Period to be Retained*
G—PIPE-LINE PROPERTY—continued.	
1. Pipe-Line Property Records—continued.	
c. Property depreciation records and memoranda thereto.	Permanently.
d. Files of detailed Authorizations for Expenditures, work or job orders showing estimated costs of construction or dismantlements, approved by proper officials, and all supporting estimates of costs of labor, material, services, and other expense, together with related material lists, maps, sketches, correspondence, and memoranda.	15 Years, if details have not been transferred to permanent records. 3 Years, if transferred to permanent records.
e. Estimates, detail records, correspondence, and memoranda for expenditures not authorized.	Optional.
f. Contracts and other agreements relating to the construction, acquisition, dismantlement, sale or other disposal of pipe-line property together with related bonds, correspondence, and memoranda.	6 Years.
g. Monthly or other periodical statements or reports reflecting the status of accounts covering authorized expenditures for extensions, additions, betterments, repairs, replacements, and retirements of pipe-line property.	Optional.
h. Miscellaneous statistics pertaining to pipe-line property changes, which are not used in support of book entries.	Optional.
i. Miscellaneous statistics pertaining to depreciation of pipe-line property, which are not used in support of book entries.	Optional.
2. Inventories of Pipe-Line Property:	
a. Inventories and registered equipment records of individually identifiable units of pipe-line and station equipment.	Permanently.

Record Titles and Descriptions	*Period to be Retained*
G—PIPE-LINE PROPERTY—continued.	
2. Inventories of Pipe-Line Property—continued.	
b. Periodical inventories of pipe-line equipment when not used to record changes in investment.	Until next inventory.
H—PURCHASES AND STORES.	
1. Material Records:	
a. General office book, card or other inventory control records of quantities and values of materials and supplies received, issued, or transferred and of balances on hand.	10 Years.
b. Field storehouse book, card or other records of quantities of materials and supplies received, issued or transferred, and of balances on hand.	3 Years.
c. Trial balances or other balancing media of general office or field storehouse records of materials and supplies.	Until audited.
d. Monthly or other periodical records of line pipe or other materials on hand at field locations.	Optional.
e. Pipe tallies wherever used in connection with receipts, deliveries or transfers of line pipe when totals are recorded elsewhere.	Optional.
2. Purchases and Sales:	
a. Requisitions or other advices from storekeepers and other employees for the purchase of materials and supplies.	3 Years.
b. Copies of orders issued for the purchase of materials and supplies.	6 Years.
c. Contracts for the purchase or sale of materials and supplies.	6 Years.
d. Bids and offers, advices and acknowledgments of receipts of orders and other records or reports of materials and supplies purchased or sold.	Optional.

Record Titles and Descriptions	*Period to be Retained*
H—PURCHASES AND STORES—continued.	
2. Purchase and Sales:	
e. Records and reports of surplus, obsolete and junk materials and scrap iron including authorities for the sale thereof.	Optional.
f. Records of stationery, printed forms, first aid and office supplies purchased for and distributed to various offices and field locations.	Optional.
3. Invoices and Bills Payable:	
a. Invoices and bills payable (originals) of all kinds, whether attached to vouchers or filed separately.	10 Years.
b. Bills for transportation charges on materials and supplies.	10 Years.
c. Records and lists for following up receipts and transmittals of invoices and bills payable for purchases and transportation charges.	Optional.
4. Materials and Supplies Received:	
a. Records of materials and supplies received from all sources.	6 Years.
b. Records and memoranda pertaining to evaluation of materials and supplies salvaged and returned to stock.	6 Years.
c. Records of inspecting and testing materials and supplies received.	3 Years.
d. Records maintained to follow up receipts of materials and the return to vendors of valuable containers.	Optional.
5. Materials and Supplies issued from Stock:	
a. Priced storehouse transfers, issue sheets or other voucher supporting records of materials and supplies issued from stock or transferred from one department or district to another.	6 Years.

Record Titles and Descriptions	*Period to be Retained*
H—PURCHASES AND STORES—continued.	
5. Materials and Supplies issued from Stock—continued.	
b. Records, memoranda and authorities supporting write-offs of surplus, obsolete and junk materials and supplies.	6 Years.
c. Storehouse copies of requisitions, receipts, transfers, issue sheets or other records of materials issued from stock or transferred from one location to another.	1 Year.
6. Inventories of Materials and Supplies:	
a. General periodical or perpetual (running) inventories of materials and supplies on hand.	2 Years.
b. Records of adjustments booked to effect a reconciliation between materials and supplies ledgers or other control records and general inventories.	2 Years.
c. Incidental inventory work papers and reports not necessary to support the book record of materials and supplies stocks.	Optional.
7. Stock Code Numbers for Materials and Supplies:	
Record of code numbers assigned to individual items of materials and supplies for accounting and other purposes.	6 Years after discontinuation of code.
8. Fuel and Power:	
a. Reports and records of fuel delivered to stations.	2 Years.
b. Records and untranscribed reports of fuel received and issued.	2 Years.
c. Meter records of natural gas, electric current and steam and daily reports of fuel on hand.	Optional.

Record Titles and Descriptions	*Period to be Retained*
I—OIL STOCKS AND MOVEMENTS.	
1. Records of Receipts, Pumpings, Stocks and Over and Short:	
a. Farm ledgers of other records in which are kept complete details of receipts of oil from leases.	10 Years.
b. Ledgers or other detailed records of receipts from all other sources, crude oil inventories, deliveries to destinations or connecting carriers or customers' accounts and quantities over and short.	6 Years.
2. Run Tickets: Run tickets or joint gage tickets showing by tank measurements quantites of oil received from producer's tanks into the carrier's pipe lines.	10 Years.
3. Run Sheets:	
a. Daily reports of oil runs, showing quantities of oil run from each district to each receiving station; and the resultant overages and shortages.	Optional.
b. Reports or records of runs, allowables and legal stocks by leases.	6 Years.
4. Hourly Tank Gage Records: Check sheet records showing hourly tank gages, oil temperatures, gravities, B. S. & W. contents, pump pressures and other data necessary for directing the flow of crude oil through the pipe lines.	Optional.
5. Pumping Reports: Daily or other periodical reports showing the quantity of oil pumped by each pumping station.	3 Years.

Record Titles and Descriptions	*Period to be Retained*
I—OIL STOCKS AND MOVEMENTS—continued.	
6. Reports of Delays in Pumping Schedules:	
Reports of delays in pumping schedules giving full particulars in respect thereto.	Optional.
7. Reports of Crude Oil Mixtures:	
Periodical reports of crude oil mixtures in tanks and pipe lines.	Optional.
8. Statements of Crude Oil Consumed as Fuel:	
Statements showing the quantity and value of crude oil consumed as fuel and stations were consumed.	6 Years.
9. Statements of Crude Oil Lost by Line Breaks and Leaks:	
Statements showing the quantity and value of crude oil lost on account of pipe line breaks and leaks and points at which losses occurred.	6 Years.
10. Reports of Power Furnished by Producers:	
Monthly reports of the quantity of oil run in connection with which power was furnished by producers, and records of payment for such power.	6 Years.
11. Records of Producers' Property:	
Records identifying ownership and locations of producers' tanks or wells to which carrier's lines are connected.	3 Years after disconnection.
12. Tank Gage Tables:	
Gage tables for all tanks from or into which receipts and deliveries are made.	3 Years after disconnection.
13. Stock Reports:	
a. Daily reports from stations and terminals showing fluid changes in each tank, the nature of such changes and tank gages at close of day.	Optional.
b. Monthly or other periodical inventory reports of crude oil on hand.	3 Years.

Record Titles and Descriptions	*Period to be Retained*
I—OIL STOCKS AND MOVEMENTS—continued.	
14. Division Orders: Directions received by carrier as to the division of interest and to whose account transported oil should be credited.	10 Years after disconnection.
15. Transfer Orders: Orders received by carrier for the transfer to other interests of oil in its custody.	10 Years.
16. Powers of Attorney: Powers of attorney authorizing carrier, as attorney in fact or as agent, to transact business for the principal.	10 Years after cancellation.
17. Credentials of Corporation Agents: Resolutions of corporations indicating the officers duly authorized to transact business with the carrier.	10 Years after cancellation.
18. Probate Records: Certified copies of wills, affidavits, copies of decrees of court, certified copies of appointments of administrators, executors and guardians.	10 Years after disconnection.
19. Freight Records: Office memorandum of charges on producers' oil shipped by cars.	3 Years.
20. Customers' Ledgers: Record of amounts paid for oil runs purchased from producers and royalty owners.	10 Years.
21. Crude Oil Suspense Ledgers: Record of oil purchases held in escrow due to title requirements and litigation.	10 Years.

Record Titles and Descriptions	*Period to be Retained*
I—OIL STOCKS AND MOVEMENTS—continued.	
22. Miscellaneous Oil Transportation Records:	
Miscellaneous records and reports pertaining to the handling and transportation of crude oil not provided for elsewhere in these regulations.	3 Years.
J—TRAFFIC.	
1. Tariffs and Other Rate Authorities:	
a. Official file copies of tariffs, classifications, division of rate sheets, and circulars in which the carrier is interested as an initial or joint transporter of crude oil.	6 Years after expiration or cancelation.
b. All other copies of tariffs, classifications, division of rate sheets and circulars referred to in J-1a above.	Optional after expiration or cancelation.
c. Copies of tariffs, classifications, etc. of other carriers, in which the carrier is not interested as an initial or joint transporter of crude oil.	Optional.
2. Requests for Tariffs and Other Rate Authorities:	
a. Requests from its agents and others and also their receipts for tariffs, classifications, division of rate sheets, and circulars issued or concurred in by the carrier relative to the transportation of crude oil.	Optional after expiration or cancelation of tariff, etc.
b. Written requests to carrier for quotations of rates and copies of such quotations.	6 Years.
3. Concurrences:	
Copies of concurrences filed with the Interstate Commerce Commission and with other regulating bodies.	6 Years after cancelation.

Record Titles and Descriptions	*Period to be Retained*
J—TRAFFIC—continued.	
4. Tariff Correspondence:	
a. Correspondence, statistics and working papers relating to the structure of tariff rates, and preparation and filing of tariffs, classifications, division of rate sheets, and circulars issued by the carrier, relative to the transportation of crude oil.	6 Years after cancelation of tariff, etc.
b. Documentary records, statistics, memoranda, correpsondence and all other records relative to litigation or investigation by regulatory bodies of the carrier's tariff rates, transportation regulations, etc.	6 Years.
K—SHIPPING.	
1. Records of Oil Shipments: Ledgers, journals or other records in which are maintained complete details of oil received, gathered, transported, stored, loaded aboard vessels and tank cars, and unloaded for account of customers.	6 Years.
2. Records of Division of Revenue with Participating Carriers: All records pertaining to division of revenue with participating or connecting carriers in joint oil movements.	6 Years.
3. Tenders of Shipment: Shipping papers such as tenders of shipment, bills of lading, requests for stoppage in transit, requests for release from storage, reconsignment orders, etc., filed in support of oil shipments.	6 Years.

Record Titles and Descriptions	*Period to be Retained*
K—SHIPPING—continued.	
4. Notices of Shipments Issued by Initial Carriers: Notices by initial carriers to participating or connecting carriers of shipments received for joint transportation, showing tender or order numbers, tariff numbers, quantity and grade of oil, names of consigners and consignees, destinations, dates issued, etc.	6 Years.
5. Shipping Order Records: Daily records of oil shipments passing through the carrier's lines.	6 Years.
6. Notices of Completed Tenders: Advices by final carriers to participating or connecting carriers of tenders completely delivered to destination.	6 Years.
7. Reports of Completed Tenders: Reports or statements furnished the accounting department when tenders of shipment are completed, showing quantity of oil transported, name of shipper, amount of revenue collectible, etc.	6 Years.
8. Recapitulation Reports: Monthly or other periodical reports, summaries and statements of oil received, delivered and undelivered on tenders of shipment.	6 Years.
9. Signed Receiving Tickets: Signed tickets evidencing receipts of oil on tenders of shipment.	6 Years.
10. Signed Delivery Tickets: Signed tickets evidencing deliveries of oil on tenders of shipment.	6 Years.

Record Titles and Descriptions	*Period to be Retained*
K—SHIPPING—continued.	
11. Tank Cars Reshipped from Terminal:	
Shipping papers including shipping orders, bills of lading, loading affidavits, teletype reports of cars loaded and shipped, reconsignments and diversions, outages and innages, etc., on tank cars reshipped from terminal.	6 Years.
12. Loading Rack Reports:	
Loading rack and loading reports on tank cars reshipped.	6 Years.
13. Tank Car Situation and Condition Reports:	
Reports of tank cars shipped and received, instructions for movement of empty tank cars, A. R. A. billing repair cards, tank cars mechanical condition reports, car situation reports, round trip reports, etc.	6 Years.
L—FIELD OPERATIONS.	
1. Field Cashiers' Records:	
Cashbooks, journals, file copies of cash reports and correspondence pertaining to field cashiers' working or petty cash funds.	6 Years.
2. Tank Strapping Records:	
Tank strappers' reports of tank measurements.	3 Years after disconnection.
3. Other Field Records:	
a. Records, reports, and statistics for the information and guidance of the superintendent in field operations, such as machinery performance and repair records, tool records, linewalkers' reports, communication system and automotive equipment operation and maintenance records and other such miscellaneous filed records and reports.	Optional.

Record Titles and Descriptions	*Period to be Retained*
L—FIELD OPERATIONS—continued.	
3. Other Field Records—continued.	
b. Field office records and reports which are duplicates of records and reports in the general office or if the same information is available from general office or other records.	Optional.
M—ENGINEERING.	
1. Basic Data: Platted field notes, survey notes, survey plats, diagrams or other basic engineering data concerning property additions, betterments, and retirements which have been executed.	10 Years after removal or abandonment of property.
2. Maps: Tracings, maps, or plans prepared from above basic data.	Optional.
3. Specifications and Engineering Studies:	
a. Specifications, engineering studies, and other similar records of property changes actually made.	6 Years.
b. Engineering studies, designs, plans, surveys, experimental work, and similar records of projects not put into execution.	
N—INSURANCE AND CLAIMS.	
1. Insurance Records:	
a. Inventories and other reports of insurable structures.	Until revised.
b. Periodical reports of tank contents of insurable oil.	Until revised.
c. Schedules of insurance against fire, storm, and other hazards; records of premium payments and of amounts recovered.	6 Years.

Record Titles and Descriptions	*Period to be Retained*
N—INSURANCE AND CLAIMS—continued.	
1. Insurance Records—continued.	
d. Insurance policies.	Optional.
e. Records of policies in force, showing insurer, term of coverage, structures, facilities and products insured, principal, premium, etc.	3 Years after expiration of policy.
f. Reports to insurers of accidents or losses and all correspondence with memoranda in connection therewith.	Optional.
2. Claims Records:	
a. Claim registers, card or book indexes, and other records in connection with the recording of personal injury, fire and other claims presented against the carrier, together with all supporting papers.	6 Years after settlement.
b. Claim registers, card or book indexes, and other records in connection with the recording of overcharge, undercharge, damages and other claims filed by the carrier against others, together with all supporting papers.	6 Years after settlement.
c. Reports and statements regarding damages by fire or otherwise to property of others.	3 Years.
d. Reports and statements regarding personal injuries to outsiders.	3 Years.
O—FINANCIAL STATEMENTS.	
1. Annual Reports:	
Annual financial statements to stockholders, balance sheets, income statements and supporting detail statements of the condition of business at the close of the fiscal period.	10 Years.

Record Titles and Descriptions	*Period to be Retained*
O—FINANCIAL STATEMENTS.	
2. Monthly, Quarterly, and Semi-Annual Reports:	
a. Financial statements, cost statements, income statements, operating reports of primary and auxiliary operations, period comparisons and all other statements rendered the management showing condition of business at stated intervals other than annual.	6 Years.
b. Monthly or other periodical statements of crude oil transactions expressed in terms of barrels.	6 Years.
3. Incidental Reports:	
Miscellaneous statistical reports, special reports of individual accounts or operations, statements and summaries requested by the management for incidental supervisory purposes and which are not entered into the accounting records of the carrier.	Optional.
P—MISCELLANY.	
1. Manuals:	
Manuals, handbooks, pamphlets, books and circulars issued for the instruction of employees in operating, accounting and other matters pertaining to the business of the carrier in the carrier's official file for the purpose.	6 Years after expiration or cancelation.
2. General Correspondence:	
a. Correspondence, telegrams and cablegrams, and correspondence file indexes thereof, directly relating to subjects in these regulations.	Same period as prescribed for subject matter.

Record Titles and Descriptions	*Period to be Retained*
P—MISCELLANY—continued.	
2. General Correspondence—continued.	
b. Other correspondence, telegrams and cablegrams, and correspondence file indexes thereof.	Optional.
c. Stenographers' note books, stenotype tapes, dictaphone or other mechanical device records if transcripts thereof are retained as provided for in P-2a above.	Optional.
3. Duplicates:	
a. Duplicates, photostatic and photographic reproductions and duplicating machine copies of accounts, records, reports, statements, maps, memoranda, etc., listed in these regulations, when they are not otherwise provided for, and when they contain no information other than that shown on the originals.	Optional (see § 115.9 of text).
b. Extra copies of correspondence, telegrams and cablegrams used for follow-up and other purposes, if original or other official copies are retained as provided for in item P-2a.	Optional.
c. Operators' copies of telegrams and cablegrams, including relay copies, if originals or other official copies are retained as provided for in item P-2a.	Optional.
d. Copies of manuals, handbooks, pamphlets, books, and circulars of instructions to employees, issued to departments or to individual employees; and also surplus unissued copies of such matter, if copies are preserved in the carrier's official file for the purpose, as provided for in item P-1.	Optional.

666 DESTRUCTION OF RECORDS

Record Titles and Descriptions	*Period to be Retained*
P—MISCELLANY—continued.	
4. Tabulating Cards and Run Sheets:	
a. Tabulating cards used in the compilation of statistics and other data, when the results are transcribed to other records covered by these regulations.	1 Year.
b. Tabulating run sheets used in the compilation of statistics and other data which are not an integral part of the carrier's official financial or operating record.	Optional.
5. Authorizations for Destruction of Records:	
Certificates and written authorizations to destroy accounts, records, reports, memoranda and other matter required by public regulatory bodies.	Permanently.

667 APPENDIX

The following forms are suggested for the use of carriers, but any other forms may be used provided they show the information required by the regulations:

(A) Form of resolution of board of directors designating an officer to have general supervision of the destruction of accounts, records, and memoranda. (See § 115.3(a) of the regulations.)

Excerpts from minutes of the meeting of the board of directors of.....Company, held at its office in ..... on ....., 194..:

"RESOLVED, That .....be,
(Title of officer or name and title)

and he is hereby, designated as the officer of this company, to have general supervision of the destruction of accounts, records, and memoranda in accordance with the Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, effective on January 1, 1943, issued by the Interstate Commerce Commission."

I hereby certify that the above is a true and correct copy.

.....
(Name)

.....
(Title)

....., 194..

(B) Form of resolution of board of directors designating an officer to have supervision of the destruction of certain accounts, records, and memoranda. (See § 115.3(a) of the regulations.)

Excerpts from minutes of the meeting of the board of directors of the .....Company, held at office in ..... on....., 194..:

"RESOLVED, That ..... be,
(Title of officer or name and title)

and he is hereby, designated as the officer having supervision of the destruction of the accounts, records, and memoranda named below, the destruction of which is permitted by the Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, effective on January 1, 1943, issued by the Interstate Commerce Commission."

Form No.	Description	Period	Item No. in I.C.C. regulations
.....	.....	.....	.....
.....	.....	.....	.....

I hereby certify that the above is a true and correct copy.

.....
(Name)

.....
(Title)

....., 194..

668 (C) Form of resolution of board of directors naming a committee for the destruction of canceled bonds, interest coupons, etc. (See § 115.5(d) of the regulations.)

Excerpt from minutes of the meeting of the board of directors of the .....Company, held at its office in..... on ....., 194..:

"RESOLVED, That pursuant to the Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, effective on January 1, 1943, issued by the Interstate Commerce Commission, the Board designates.....
.....to be a committee
(Titles of such persons, or names and titles)
to act in conjunction with the representatives of the trustees in the destruction of.....
.....
.....
.....
.....

.....

.....

(List of and description of documents to be destroyed)

I hereby certify that the above is a true and correct copy.

.....

(Name)

.....

(Title)

....., 194..

(D) Form of written authority for the destruction of certain accounts, records, and memoranda. (See § 115.4 (b) of the regulations.)

The.....Company,

Office of .....,

....., 194..

In conformity with the authority conferred upon me by the board of directors, I hereby authorize and direct.....

..... to destroy the accounts,

(Name and title or occupation)

records and memoranda of this company described below:

Form No.	*Description*	*Period*	*Item No. in I. C. C. regulations*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

.....

(Name)

.....

(Title)

669 (E) Form of combined application, authority, and certificate of destruction of certain accounts, records, and memoranda.

SCHEDULE OF RECORDS FOR DESTRUCTION

Description of records	*Form number*	*Package or file number*	*Date of record From—*	*To—*	*Location*	*Item No. under I. C. C. order*
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....

1. I hereby make application for authority for.....
.....to destroy
(Name of person or persons to destroy record)
the records described on the previous sheets, and I certify that such action will be in strict conformity with the order of the Interstate Commerce Commission, effective January 1, 1943.

.....
(Name of person in immediate charge of records)

.....
(Official title)

Approved:

.....
(Name of supervising officer)

.....
(Title)

.....
(Date)

2. Respectfully forwarded to.....
(Name of officer having supervision of destruction)

.....
(Name of supervising officer)

.....
(Official title)

.....
(Date)

3. The destruction by.....,
(Name of person or persons to destroy records)
of the records described on the previous sheets is hereby authorized.

.....
(Name of officer having supervision of destruction)

.....
(Official title)

.....
(Date)

670 4. I hereby certify that the records described in the foregoing sheets have been destroyed by....., and that no other records were destroyed therewith.

.....
(Name of person or persons destroying records)

.....
(Date)

(F) Form of written authority of continuing effect for the destruction of accounts, records, and memoranda. (See § 115.4(b) of the regulations.)

The .....Company,
Office of .....,
....., 194..

In conformity with the authority conferred upon me by the board of directors, I hereby authorize and direct.....
.....to destroy from time
(Name and title or occupation)
to time the accounts, records and memoranda of this company in his custody, the destruction of which is permitted by the Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, effective on January 1, 1943, issued by the Interstate Commerce Commission.

.....
(Name)

.....
(Title)

(G) Form of certificate of destruction. (See § 115.5(b) of the regulations.)

The .....Company,
Office of .....,
....., 194..

.....
.....

Dear Sir: I hereby certify that I have this day destroyed the accounts, records, and memoranda listed below pursuant to your authority dated....., 194..
I further certify that no accounts, records, or memoranda other than those named have been destroyed therewith.

Form No.	*Description*	*Period*	*Item No. in I. C. C. regulations*
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Yours truly,

.....
(Name)

.....
(Title or occupation)

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34	B- 9	CLAIMS		151	I- 1	217	L- 3	303	O- 2
35	B- 9	81	N- 2	152	I- 1	218	L- 2	304	L- 3
ACCOUNTING—GENERAL		82	N- 2	153	I-12	219	L- 3	305	O- 2
		83	N- 2	154	J- 5	220	L- 3	306	O- 3
		84	N- 2	155	I-13	221	L- 3	307	O- 3
41	C- 1	TRAFFIC		156	I- 1	222	L- 3	308	L- 3
42	C- 2			157	I- 5	223	L- 3	309	C- 5
43	B- 5	91	J- 1	SHIPPING		224	L- 3	310	P- 4
44	C- 4	92	J- 2					MISCELLANEOUS	
45	N- 1	93	J- 3	171	K- 1	225	L- 3		
46	C- 1	94	J- 4	172	K- 2	226	L- 3	321	M- 1
47	C-10	PURCHASES AND STORES		173	K- 3	227	L- 1	322	P- 3
48	C-12			174	K- 4	228	L- 3	323	E- 2
49	C-12	101	H- 1	175	K- 5	229	L- 3	324	P- 1
50	C- 5	102	H- 2	176	K- 8	230	L- 3	325	P- 5
51	C- 4	103	H- 3	177	K- 6			326	P- 2

695 TITLE 49—TRANSPORTATION AND RAILROADS

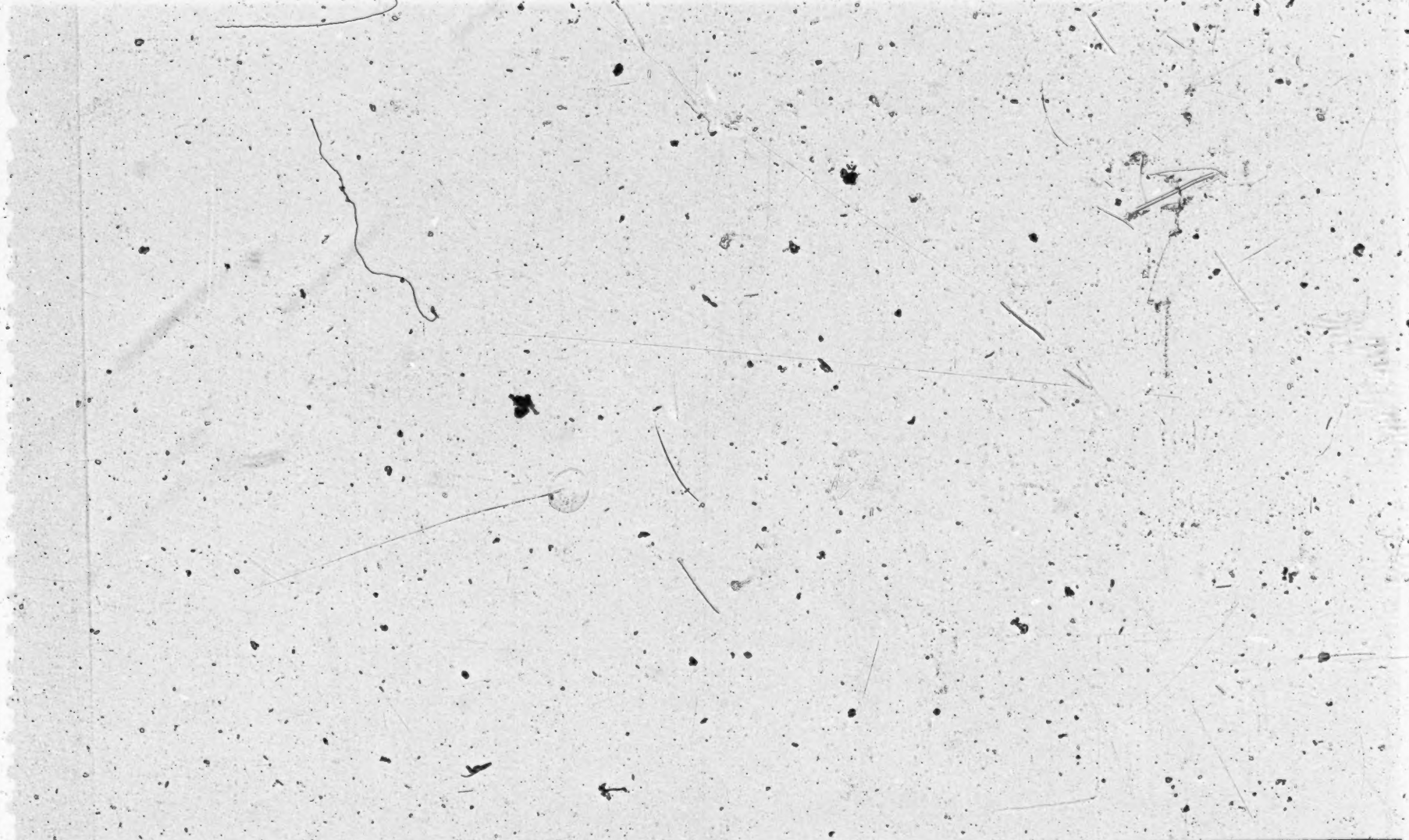
CHAPTER I—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 115—DESTRUCTION OF RECORDS OF CARRIERS BY PIPE LINE

ORDER

At a session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 6th day of February, A. D. 1947.



The matter of regulations to govern the destruction of records of pipe line carriers being under consideration pursuant to provisions of section 20 of the Interstate Commerce Act, as amended; and,

It appearing that the "Regulations to Govern the Destruction of Records of Carriers by Pipe Lines, Issue of 1943," as prescribed by order dated November 25, 1942, should be modified for proper administration of the Act; and,

It further appearing that this proposed modification was initiated prior to the effective date of the Administrative Procedure Act and that, under the provisions of section 12 of that Act, publication of a general notice of the modification as proposed rule making, as contemplated by section 4 of the same Act, was not necessary (35 Stat. 648, 54 Stat. 918, 49 U.S.C. 20(7) (b):

IT IS ORDERED, THAT,

(1) The following provision be added to § 115.2 *Preservation of other records: Special permission to destroy.*

(c) Pipe line companies may be granted authority to preserve photographic copies of certain records in lieu of original records or other copies specified in these regulations. Application for such authority shall be filed in the form of a letter which shall describe the particular records intended to be preserved by this method and the process to be used.

(2) This order shall be effective March 17, 1947.

696 (3) A copy of this order shall be served upon every carrier by pipe line and upon every trustee, receiver, executor, administrator, or assignee of any such carrier, and notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

By the Commission, Division 1.

W. P. BARTEL
Secretary

(Seal)

697 NOTE: The reporting requirement of this Order has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

INTERSTATE COMMERCE COMMISSION
Washington

TITLE 49 TRANSPORTATION AND RAILROADS
CHAPTER I INTERSTATE COMMERCE COMMISSION
SUBCHAPTER A GENERAL RULES AND REGULATIONS
PART 120 ANNUAL, SPECIAL OR PERIODICAL REPORTS

CARRIERS BY PIPELINE ANNUAL REPORT FORM P

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 11th day of February, A. D. 1947.

The matter of Annual Reports from Carriers by Pipeline being under consideration:

IT IS ORDERED, That the order of December 22, 1944, In the Matter of Annual Reports from Carriers by Pipeline (Sec. 120.61, Title 49, Code of Federal Regulations) be, and it is hereby modified with respect to annual reports for the year ended December 31, 1946, and subsequent years, as follows:

Sec. 120.61 *Form prescribed for carriers by Pipeline.* Each Carrier by Pipeline subject to the provisions of Section 20, Part I of the Interstate Commerce Act, shall file under oath an annual report for the year ended December 31, 1946 and for each succeeding year until further order, in accordance with Annual Report Form P (Carriers by Pipeline) which is hereby approved and made a part of this Order. The annual report shall be filed, in duplicate, in the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, Washington 25, D. C., on or before March 31 of the year following the one to which it relates. (24 Stat. 386, 34 Stat. 593, 35 Stat. 649, 36 Stat. 556, 41 Stat. 493, 54 Stat. 916, 49 U.S.C. 20 (1)-(8)).

By the Commission, Division 1.

W. P. BARTEL
Secretary

(Seal)

698 *Commission's Exhibit No. 5*

INTERSTATE COMMERCE COMMISSION

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 20th day of October, A. D. 1938.

IN THE MATTER OF STATISTICAL REPORTS OF PIPE LINE COMPANIES

The subject of statistical reports of pipe line companies being under consideration:

IT IS ORDERED, That each and every pipe line company subject to the provisions of Section 20 of the Interstate Commerce Act, if it has had annual operating revenues of more than $500,000 for the three consecutive calendar years prior to the period for which the report hereinafter mentioned is rendered, shall and is hereby required to make a report every three months of its total transportation revenue and total number of barrels of oil originated and received from connections, in accordance with the attached quarterly form which is made a part of this order.

IT IS FURTHER ORDERED, That each said quarterly report shall be filed in duplicate in the Bureau of Statistics, Interstate Commerce Commission, Washington, D. C., within thirty days after the close of the period to which it relates, the first report to be for the three months ended September 30, 1938.

By the Commission, Division 4.

W. P. BARTEL
Secretary

(Seal)

INTERSTATE COMMERCE COMMISSION
Bureau of Transport Economics and Statistics
Washington

Report is to be filed in duplicate
in the
BUREAU OF TRANSPORT ECONOMICS
AND STATISTICS
INTERSTATE COMMERCE COMMISSION
WASHINGTON, D. C.
within 30 days after the end of
the quarter for which it is made.

Form Approved
Budget Bureau No. 60-R116

Form OPS
Quarter ended with
....., 19....
(Month)

.....
(Full name of reporting carrier)

Region No.	Carrier No.

356

QUARTERLY REPORT OF PIPE LINE COMPANIES Subject to the Jurisdiction of the Interstate Commerce Commission and Having Annual Operating Revenues of More than $500,000

For ..... Quarter (..... to .....) of 19... and 19...

Item	19...	19...
Transportation revenue (Accounts 501 and 551)* ...	$	$
Number of barrels of oil originated and received from connections#		

Name and title of officer making report (Print) .....
Signature .....
Address (Print) .....

* State in whole dollars with cents omitted.
\# State in whole barrels with fractions omitted.

~~2-57~~ Annual Report Form P
(Carriers by Pipe Line)

111 BUDGET BUREAU
No. 60-R106.2
Approval expires 7-31-47

ANNUAL REPORT

OF

_____

_____

TO THE

INTERSTATE COMMERCE COMMISSION

FOR THE

YEAR ENDED DECEMBER 31, 1946

NOTICE

1. This Form for annual report should be filled out in triplicate and two copies returned to the *Interstate Commerce Commission, Bureau of Transport Economics and Statistics*, Washington 25, D. C., by *March 31, 1947.* Attention is specially directed to the following provisions of Part I of the Interstate Commerce Act:

SEC. 20. The Commission is hereby authorized to require annual, periodical, or special reports from carriers (as defined in this section) and from lessors (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers and lessors specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classifying such carriers and lessors as it may deem proper for any of these purposes. Such annual reports shall give an account of the affairs of the carrier or lessor in such form and detail as may be prescribed by the Commission.

Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which report is made, unless additional time be granted in any case by the Commission. * * *

Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, * * * or shall knowingly or willfully file with the Commission any false report or other document, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment: * * *

Any carrier or lessor, * * * or any officer, agent, employee, or representative thereof, who shall fail to make and file an annual or other report with the Commission within the time fixed by the Commission, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.

As used in this section * * * the term "carrier" means a common carrier subject to this part, and includes a receiver or trustee of such carrier; and the term "lessor" means a person owning a railroad, a water line or a pipe line, leased to and operated by a common carrier subject to this part, and includes a receiver or trustee of such lessor.

The respondent is further required to send to the Bureau of Transport Economics and Statistics, immediately upon publication, two copies of its latest printed annual report to stockholders. If its annual reports to stockholders are not printed, that fact should be stated at the foot of this page.

2. The instructions in this Form should be carefully observed, and *each question should be answered fully and accurately*, whether it has been answered in a previous annual report or not. Except in cases where they are specifically authorized, cancellations, arbitrary check marks, and the like should not be used either as partial or as entire answers to inquiries. If any inquiry, based on a preceding inquiry in the present report form, is, because of the answer rendered to such preceding inquiry, inapplicable to the person or corporation in whose behalf the report is made, such notation as "Not applicable; see page ——, schedule (or line) number ——" should be used in answer thereto, giving *precise reference* to the *portion of the report showing the facts which make the inquiry inapplicable.* Where the word "None" truly and completely states the fact, it should be given as the answer to any particular inquiry or any particular portion of an inquiry. Where dates are called for, the month and day should be stated as well as the year. Customary abbreviations may be used in stating dates.

3. *Every annual report should, in all particulars, be complete in itself*, and references to the returns of former years should not be made to take the place of required entries except as herein otherwise specifically directed or authorized.

4. If it be necessary or desirable to insert additional statements, typewritten or other, in a report, they should be legibly made on durable paper and, wherever practicable, on sheets not larger than a page of the Form. *Inserted sheets should be securely attached, preferably at the inner margin; attachment by pins or clips is insufficient.*

5. All entries should be made in a permanent black ink. Items of a contrary and unusual character should be suitably designated.

Money items throughout this annual report Form should be shown in units of dollars adjusted to accord with footings.

6. Each respondent should make its annual report to this Commission in triplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason three copies of the Form are sent to each company concerned.

7. Except where the context clearly indicates some other meaning, the following terms when used in this Form have the meanings below stated:

Commission means *the Interstate Commerce Commission.* **Respondent** means *the person or company in whose behalf the report is made.* **The year** means *the year ended December 31 for which the report is made.* **The close of the year** means *the close of business on December 31 of the year for which the report is made;* or, in case the report is made for a shorter period than one year, it means *the close of the period covered by the report.* **The beginning of the year** means *the beginning of business on January 1 of the year for which the report is made;* or, in case the report is made for a shorter period than one year, it means *the beginning of the period covered by the report.* **The preceding year** means *the year ended December 31 of the year next preceding the year for which the report is made.* **The Uniform System of Accounts for Pipe Lines** means *the system of accounts for Pipe Lines embraced in the various classifications prescribed by the Interstate Commerce Commission, effective on January 1, 1935, and all amendments and revisions thereof and supplements and additions thereto prescribed by the said Commission.*

FOR THE INDEX SEE THE INSIDE OF BACK COVER

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WASHINGTON 25, D. C.
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75 CENTS PER COPY

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SPECIAL NOTICE

The attention of the respondent is directed below to certain particulars in which this report form differs from the corresponding form for the preceding year; but it should be understood that mention is not made of necessary substitutions of dates, or, in general, of such other things as simple modifications intended to make requirements clearer, other minor adjustments, and typographical corrections.

Page No.	Schedule No.	Remarks
202, 203	211	Column (*c*) subdivided into two columns, lettered (*c*) and (*d*), reading "Expenditures for new construction and improvements," and "Expenditures for existing property purchased or otherwise acquired," respectively. Other columns relettered, and instructions modified, accordingly.

445 341

ANNUAL REPORT

OF

TO THE

INTERSTATE COMMERCE COMMISSION

FOR THE

YEAR ENDED DECEMBER 31, 1946

Name, official title, and office address of officer in charge of correspondence with the Commission regarding this report:

(Name) _____ (Title) _____

(Office address) _____
(Street and number, city, zone, and State)

INSTRUCTIONS FOR MAKING RETURNS ON OPPOSITE PAGE

There should appear on the opposite page entries or notations sufficient to show that no question or item has been overlooked. If returns are not made as required, some reference, as, "See page 100", should be made to this page, on which a statement of the reason for the variation or omission should be given.

Answers to the questions asked should be made in full, without reference to data returned on the corresponding page of previous reports. Only changes during the year are required, under items 4, 5, and 6.

1. *Give in full the exact name of the respondent.* Use the words "The" and "Company" only when they are parts of the corporate name. The corporate name should also be given uniformly throughout the report, notably on the cover, on the title page, and in the "Verification" (p. 533). If the report is made by receivers, trustees, a committee of bondholders, or individuals otherwise in possession of the property, state names and facts with precision.

2. If incorporated under a special charter, give date of passage of the act; if under a general law, give date of filing certificate of organization; if a reorganization has been effected, give date of reorganization. If a receivership or other trust, give also date when such receivership or other possession began. If a partnership, give date of formation and also names in full of present partners.

3. Give *specific* reference to laws of each State or Territory under which organized, citing chapter and section. Include all grants of corporate powers by the United States, or by Canada or other foreign country; also, all amendments to charter.

4. Give *specific* reference to special or general laws under which each consolidation or merger or combination of other form was effected during the year, citing chapter and section. Specify Government, State, or Territory under the laws of which each company consolidated or merged or otherwise combined during the year into the present company was organized; give reference to the charters of each, and to all amendments of them. *Distinguish carefully between mergers and consolidations.* For the purpose of this report, a *merger* may be defined as the *absorption* of one of two existing corporations by the other in such wise that the absorbed or merged corporation ceases to exist as a legal entity, its property passing to the merging or absorbing corporation, which assumes all of the merged corporation's obligations. A *consolidation* may be defined as the *union* of two or more existing corporations into a new corporation, which, through the consolidation, acquires all of the property of the uniting corporations, assumes all of their obligations, and issues its capital stocks in exchange for those of the uniting corporations in ratios fixed in the agreement for consolidations, after completion of which both or all of the consolidating corporations cease to exist as legal entities. Combinations that are not classifiable as mergers or consolidations should be fully explained. Cases in which corporations have become inactive and have been practically absorbed through ownership or control of their entire capital stock, through leases of long duration (under which the lessor companies *do not* keep up independent organizations for financial purposes), or otherwise, so that no distinction is made in operating or in accounting by reason of the original separate incorporation, *should be included here in a separate list and fully explained* in answering this and the next following inquiry.

6. State the occasion for the reorganization, whether by reason of foreclosure of mortgage or otherwise, according to the fact. Give date of organization of original corporation and refer to laws under which organized.

EXPLANATORY REMARKS

101. IDENTITY OF RESPONDENT

1. Exact name of pipe-line company making this report. (See Instructions, p. 100)

2. Date of incorporation

3. Under laws of what Government, State, or territory organized? If more than one, name all. Give specific reference to each statute and all amendments thereof. If in bankruptcy, give court of jurisdiction and dates of beginning of receivership or trusteeship and of appointment of receivers or trustees

4. If a consolidated or a merging company, name all constituent and all merged companies absorbed during the year. Give specific reference to charters or general laws governing organization of each, and all amendments of same.

5. Date and authority for each consolidation and for each merger effected during the year.

6. If a reorganized company, give name of original corporation, refer to laws under which it was organized, and state the occasion for any reorganization effected during the year.

7. State whether or not the respondent during the year conducted any part of its business under a name or names other than that shown in response to inquiry No. 1, above; if so, give full particulars.

INSTRUCTIONS FOR MAKING RETURNS ON PAGES 102 AND 103

There should appear on these pages entries or notations sufficient to show that no question or item has been overlooked. The word "None" may be used wherever applicable.

If returns are not made as required, some reference, as, "See page 103", should be made to this page, on which a statement of the reason for the variation or omission should be given.

Give particulars of the various directors and officers of the respondent at the close of the year. In schedule No. 103 give the title, name, and address of the principal general officers having system jurisdiction by departments, as follows: Executive, Legal, Fiscal and Accounting, Purchasing, Operating, Construction, Maintenance, Engineering, Commercial, and Traffic. If there are receivers, trustees; or committees, who are recognized as in the controlling management of the company or of some department of it, give also their names and titles, and the location of their offices. If the duties of an officer extend to more than one department, or if his duties are not in accordance with the customary acceptance of his given title, state briefly the facts under Explanatory Remarks below.

EXPLANATORY REMARKS

102. DIRECTORS

Line No.	Name of director (a)	Office address (b)	Date of beginning of term (c)	Date of expiration of term (d)	Remarks (e)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

21. Give the names (and titles) of all *officers* of the *Board of Directors* of the respondent at the close of the year:
Chairman of Board..... Secretary (or clerk) of Board.....

22. Name the members of the *executive committee* of the *Board of Directors* of the respondent at the close of the year (naming first the chairman), and state briefly the powers and duties of that committee:

103. PRINCIPAL GENERAL OFFICERS

Line No.	Title of general officer (a)	Department or departments over which jurisdiction is exercised (b)	Name of person holding office at close of year (c)	Office address (d)
31				
32				
33				
34				
35				
36				
37				
38				
39				
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41				
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58				
59				
60				

104. CORPORATE CONTROL OVER RESPONDENT *

61. Did any corporation or corporations, pipe line or other, hold control over the respondent at the close of the year?

If control was so held, state:

(a) The form of control, whether sole or joint

(b) The name of the controlling corporation or corporations

(c) The manner in which control was established

(d) The extent of control

(e) Whether control was direct or indirect

(f) The name of the intermediary through which control, if indirect, was established

62. Did any individual, association, or corporation hold control, as trustee, over the respondent at the close of the year?

If control was so held, state:

(a) The name of the trustee

(b) The name of the beneficiary or beneficiaries for whom the trust was maintained

(c) The purpose of the trust

* For definition of control see page 207.

109. VOTING POWERS AND ELECTIONS

1. State whether or not each share of stock has the right to one vote; if not, give full particulars in a footnote .....

2. Are voting rights proportional to holdings? ..... If not, state in a footnote the relation between holdings and corresponding voting rights.

3. Are voting rights attached to any securities other than stock? ..... If so, name in a footnote each security, other than stock, to which voting rights are attached (as of the close of the year), and state in detail the relation between holdings and corresponding voting rights, stating whether voting rights are actual or contingent, and if contingent showing the contingency.

4. Has any class or issue of securities any special privileges in the election of directors, trustees, or managers, or in the determination of corporate action by any method? ..... If so, describe fully (in a footnote) each such class or issue and give a succinct statement showing clearly the character and extent of such privileges.

5. Give the date and state the purpose of the closing of the stock book or compilation of list of stockholders and their holdings at the latest date prior to the preparation of this report (even though such date be after the close of the year).

6. State the total voting power of all security holders of the respondent at the date given in answer to inquiry No. 5, if within 1 year of the date of such preparation; if not, state as of the close of the year ..... votes, as of ..... (Date)

7. State the total number of stockholders of record, corresponding to the answer to inquiry No. 6 ..... stockholders.

8. Give the names of the 30 security holders of the respondent who, at the date of the closing of the stock book or compilation of list of stockholders of the respondent (if within 1 year of the preparation of this report), had the highest voting powers in the respondent, showing for each his address, the number of votes which he would have had a right to cast on that date had a meeting then been in order, and the classification of the number of votes to which he was entitled, with respect to securities held by him, such securities being classified as common stock, second preferred stock, first preferred stock, and other securities, stating in a footnote the names of such other securities (if any). If any such holder held in trust, give (in a footnote) the particulars of the trust. *If the stock book was not closed or the list of stockholders compiled within such year, show such 30 security holders as of the close of the year.*

Line No.	Name of security holder (a)	Address of security holder (b)	Number of votes to which security holder was entitled (c)	Number of Votes, Classified with Respect to Securities on Which Based: Stocks — Common (d)	Stocks — Preferred — Second (e)	Stocks — Preferred — First (f)	Other securities with voting power (g)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
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19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							

9. State the total number of votes cast at the *latest* general meeting for the election of directors of the respondent ..... voices cast.

10. Give the date and place of such meeting. .....

110. GUARANTIES AND SURETYSHIPS

1. State whether or not at any time within the year the respondent was under obligation as guarantor or surety for the performance by any other corporation or other association of any agreement or obligation; if so, show for each such contract of guaranty or suretyship in force at any time during the year:

(a) The names of all parties principally and primarily liable;
(b) Description of the agreement or obligation;
(c) The amount of the contingent liability;
(d) State whether the contingent liability is sole or joint.

This inquiry does not cover the case of ordinary commercial paper maturing on demand or not later than two years after date of issue.

Line No.	Names of all parties principally and primarily liable (a)	Description of agreement or obligation (b)	Amount of contingent liability (c)	Sole or joint (d)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
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38				

2. State whether or not at any time within the year any corporation or other association was under obligation as guarantor or surety for the performance by the respondent of any agreement or obligation; if so, show for each such contract of guaranty or suretyship in force at any time during the year:

(a) Description of agreement or obligation;
(b) The names of all guarantors and sureties;
(c) Amount of contingent liability of guarantors;
(d) State whether the contingent liability is sole or joint.

This inquiry does not cover the case of ordinary commercial paper maturing on demand or not later than two years after date of issue, nor does it include ordinary surety bonds or undertakings on appeals in court proceedings.

Line No.	Description of agreement or obligation (a)	Names of all guarantors and sureties (b)	Amount of continent liability of guarantors (c)	Sole or joint (d)
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				

200A. COMPARATIVE BALANCE SHEET STATEMENT—ASSET SIDE

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the Uniform System of Accounts for Pipe Lines. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated. The entries in the short column (b_2) should be deducted from those in column (b_1) in order to obtain corresponding entries for column (c). All credit entries hereunder should be preceded by the abbreviation "Cr."

Line No.	Balance at beginning of year (a)	Item (b)	Balance at close of year (c)
	$		$
1	x x	INVESTMENTS	x x
2		(1) Investment in carrier property (pp. 202, 203)	
3		(2) Cost of organization	
4		(3) Operating oil supply (b_1) Total book assets at close of year; (b_2) Respondent's own issues included in (b_1)	
5		(4) Sinking funds (p. 215)	
6		(5) Miscellaneous physical property (p. 206)	
7	x x	(6) Investments in affiliated companies:	x x
8		Stocks (pp. 208, 209)	
9		Bonds (pp. 208, 209)	
10		Notes (pp. 208, 209)	
11		Advances (pp. 208, 209)	
12	x x	(7) Other investments:	x x
13		Stocks (pp. 210, 211)	
14		Bonds (pp. 210, 211)	
15		Notes (pp. 210, 211)	
16		Advances (pp. 210, 211)	
17		Miscellaneous (pp. 210, 211) Par values of holdings at close of year; Nonpar stock held at close of year: No. of shares, Book cost	
18	x x	(8) Company securities owned	x x
19		TOTAL	
20	x x	CURRENT ASSETS	x x
21		(9) Cash	
22		(10) Demand loans and deposits	
23		(11) Time drafts and deposits (b_1) Total book assets at close of year; (b_2) Respondent's holdings included in (b_1)	
24		(12) Special deposits	
25		(13) Notes receivable (p. 216)	
26		(14) Agents' balances	
27		(15) Revenue receivable	
28		(16) Accounts receivable (p. 216)	
29		(17) Material and supplies	
30		(18) Interest and dividends receivable	
31		(19) Rents receivable	
32		(20) Other current assets	
33		TOTAL	
34	x x	DEFERRED DEBITS	x x
35		(21) Working-fund advances (b_1) Total book assets at close of year; (b_2) Respondent's own issues included in (b_1)	
36		(22) Insurance and other funds (p. 217)	
37		(23) Rents and insurance premiums paid in advance	
38		(24) Taxes paid in advance	
39		(25) Discount on capital stock	
40		(26) Discount on funded debt	
41		(27) Extraordinary maintenance suspense	
42		(28) Other deferred debits (p. 218)	
43		TOTAL	
44		GRAND TOTAL	

200L. COMPARATIVE BALANCE SHEET STATEMENT—LIABILITY SIDE

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the Uniform System of Accounts for Pipe Lines. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated. The entries in the short column (b_2) should be deducted from those in column (b_1) in order to obtain corresponding entries for column (c). All debit entries hereunder should be preceded by the abbreviation "Dr."

Line No.	Balance at beginning of year (b)			Item (a)			Balance at close of year (c)		
	$						$		
1	x x	x x	x x	STOCK	(b_1) Total book liability at close of year	(b_2) Respondent's holdings included in (b_1)	x x	x x	x x
2	x x	x x	x x				x x	x x	x x
3				(51) Capital stock (p. 223)					
4				(52) Liability for conversion of stock (p. 223)					
5				(53) Premium on capital stock	(b_1) Total subscriptions at close of year	(b_2) Amount unpaid included in (b_1)			
6				(54) Capital stock installments (p. 224)					
7				TOTAL					
8	x x	x x	x x	LONG-TERM DEBT	(b_1) Total book liability at close of year	(b_2) Respondent's holdings included in (b_1)	x x	x x	x x
9	x x	x x	x x				x x	x x	x x
10				(55) Funded debt unmatured (p. 226)					
11				(56) Receivers' certificates (p. 229)					
12				(57) Nonnegotiable debt to affiliated companies (p. 230)					
13				TOTAL					
14	x x	x x	x x	CURRENT LIABILITIES			x x	x x	x x
15				(58) Notes payable (p. 231)					
16				(59) Joint revenue payable					
17				(60) Wages payable					
18				(61) Accounts payable (p. 231)					
19				(62) Interest matured unpaid*					
20				(63) Dividends matured unpaid					
21				(64) Funded debt matured unpaid (p. 231)**					
22				(65) Unmatured dividends declared					
23				(66) Unmatured interest accrued					
24				(67) Unmatured rents accrued					
25				(68) Taxes accrued					
26				(69) Other current liabilities					
27				TOTAL					
28	x x	x x	x x	DEFERRED CREDITS AND RESERVES			x x	x x	x x
29				(70) Liability for provident funds					
30				(71) Premium on funded debt					
31				(72) Insurance reserve					
32				(73) Operating reserves					
33				(74) Accrued depreciation—Carrier property (p. 238)					
34				(75) Amortization reserve (p. 240)					
35				(76) Accrued depreciation—Miscellaneous physical property					
36				(78) Other deferred credits (p. 241)					
37				(79) Reserve for adjustment of investment in securities					
38				TOTAL					
39	x x	x x	x x	SURPLUS			x x	x x	x x
40				(80) Unearned surplus (p. 243)					
41				(81) Appropriated earned surplus (p. 243)					
42				(82) Earned surplus† (p. 300)					
43				TOTAL†					
44				GRAND TOTAL					

* Includes $ ..... in default for as long as 60 days on a principal of $ .....

** Excludes $ ..... matured funded debt held by or for respondent and not canceled.

† If deficit, precede with "Dr."

INSTRUCTIONS

Give an analysis of changes during the year in account No. 1, "Investment in Carrier Property," by carrier-property accounts.

Show in column (*c*) the debits representing newly constructed property, and additions and improvements made to existing property. In column (*d*) show expenditures for existing pipe line property purchased or otherwise acquired. Show in column (*e*) the total credits representing property sold, abandoned, or otherwise retired during the year.

If during the year pipe line operating property was acquired from or sold to some other company, the purchase or sales price for which was in excess of $25,000, state in a footnote the name of the company, the mileage acquired or disposed of, and the date of acquisition or disposal, giving termini and the cost of the property to the respondent. Also furnish a statement of the amount included in or credited to each primary account representing such property acquired or disposed of.

Show in column (*g*) for each primary account the net of all accounting adjustments, transfers, and clearances applicable to prior years' accounting.

Each adjustment, clearance, or transfer in excess of $50,000 should be fully explained in a footnote, except that transfers to or from account No. 5, "Miscellaneous physical property," should be explained in schedule 212.

An entry in columns (*f*), (*g*), or (*h*) which represents an excess of credits over debits should be marked "Cr."

Line No.	Account (a)	Balance at beginning of year (b)		
		$		
1	GATHERING LINES	x x	x x	x x
2	(101) Land			
3	(102) Rights-of-way			
4	(103) Line pipe			
5	(104) Line-pipe fittings			
6	(105) Pipe-line construction			
7	(106) Buildings			
8	(107) Boilers			
9	(108) Pumping equipment			
10	(109) Machine tools and machinery			
11	(110) Other station equipment			
12	(111) Oil tanks			
13	(112) Delivery facilities			
14	(113) Communication systems			
15	(114) Office furniture and equipment			
16	(115) Vehicles and other work equipment			
17	(116) Other property			
18	TOTAL			
19	TRUNK LINES	x x	x x	x x
20	(151) Land			
21	(152) Rights-of-way			
22	(153) Line pipe			
23	(154) Line-pipe fittings			
24	(155) Pipe-line construction			
25	(156) Buildings			
26	(157) Boilers			
27	(158) Pumping equipment			
28	(159) Machine tools and machinery			
29	(160) Other station equipment			
30	(161) Oil tanks			
31	(162) Delivery facilities			
32	(163) Communication systems			
33	(164) Office furniture and equipment			
34	(165) Vehicles and other work equipment			
35	(166) Other property			
36	TOTAL			
37	GENERAL	x x	x x	x x
38	(171) Land			
39	(176) Buildings			
40	(179) Machine tools and machinery			
41	(183) Communication systems			
42	(184) Office furniture and equipment			
43	(185) Vehicles and other work equipment			
44	(186) Other property			
45	(191) Construction work in progress			
46	(192) Unadjusted investments			
47	(193) Acquisition adjustment			
48	TOTAL			
49	GRAND TOTAL			

211. INVESTMENT IN CARRIER PROPERTY—Concluded

Property Changes During the Year												Transfers, clearances, and adjustments, prior years (c)			Increase or decrease during the year (b)			Balance at close of year (a)			Line No.
Expenditures for new construction and improvements (g)			Expenditures for existing property purchased or otherwise acquired (d)			Credit (e)			Net (f)												
$			$			$			$			$			$			$			
x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	1
																					2
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																					16
																					17
																					18
x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	19
																					20
																					21
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																					32
																					33
																					34
																					35
																					36
x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	x x	37
																					38
																					39
																					40
																					41
																					42
																					43
																					44
																					45
																					46
																					47
																					48
																					49

212. MISCELLANEOUS PHYSICAL PROPERTY

Give particulars of all investments of the respondent in physical property includible in account No. 5, "Miscellaneous physical property", in the Uniform System of Accounts for Pipe Lines. The description of the property in column (a) should give the location and other identification of it with a reasonable degree of particularity.

Each item amounting to $25,000 or more should be stated; items less than $25,000 may be combined in a single entry designated "Minor items, each less than $25,000."

If any property of the character provided for in this schedule was disposed of during the year, or by reclassification was transferred to or from the carrier property accounts, give particulars in a footnote.

The revenues, expenses, and taxes of operated properties should be summarized in schedule 312 on page 302.

Line No.	Name and description of physical property held at close of year as an investment (a)	Date included in account No. 5 (b)	Book cost at close of year (c)	Remarks (d)
			$	
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40	TOTAL			

GENERAL INSTRUCTIONS CONCERNING RETURNS IN SCHEDULES 217 AND 218

The above schedules should give particulars of stocks, bonds, notes, advances, and miscellaneous securities of affiliated and nonaffiliated companies held by respondent at close of year specifically as investments; investments made or disposed of during the year; and dividends and interest credited to income. They should exclude securities issued or assumed by respondent.

Two companies are affiliated, as the term is here used, when one directly or indirectly controls the other, or when they are subject to a common control.

By "control," as the term is here used, is meant the ability to determine the action of a company. Attention is specifically directed to section 1 (3) (b) of Part I of the Interstate Commerce Act which provides that, "For the purposes of sections 5, 12 (1), 20, 204 (a) (7), 210, 220, 304 (b), 310, and 313 of this Act, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

For the purposes of this report, the following are to be considered forms of control:

(a) Right through title to securities issued or assumed to exercise the major part of the voting power in the controlled company;
(b) Right through agreement or through sources other than title to securities to name the majority of the board of directors, managers, or trustees of the controlled company;
(c) Right to foreclose a priority lien upon all or a major part in value of the tangible property of the controlled company;
(d) Right to secure control in consequence of advances made for construction of the property of the controlled company.

Indirect control is that exercised through an intermediary.

A leasehold interest in the property of a company is not for the purpose of these accounts to be classed as a form of control over the lessor company.

These investments should be subdivided to show the par value pledged, unpledged, and held in fund and deposit accounts. Under "pledged" include the par value of securities recorded in accounts Nos. 6, "Investments in affiliated companies," and 7, "Other investments," which are deposited with some pledgee or other trustee, or held subject to the lien of a chattel mortgage, or subject to any other restriction or condition which makes them unavailable for general corporate purposes. "Unpledged" should include all securities held by or for the respondent free from any lien or restriction, recorded in the accounts mentioned above. Under "In sinking funds, insurance funds, and deposit accounts" include the par value of securities recorded in accounts Nos. 4, "Sinking funds"; 12, "Special deposits"; and 22, "Insurance and other funds."

List the investments in the following order and show a total for each group and each class of investments:

(A) Stocks:
  1. Pipe-line companies—active.
  2. Pipe-line companies—inactive.
  3. Non-pipe-line companies—active.
  4. Non-pipe-line companies—inactive.
(B) Bonds (including U. S. Government Bonds).
(C) Notes.
(D) Advances.
(E) Miscellaneous securities.

The subclassification of classes (B), (C), (D), and (E) should be the same as that provided for class (A).

By an active corporation is meant one which maintains an organization for operating property or administering its financial affairs. An inactive corporation is one which has been practically absorbed in a controlling corporation, and which neither operates property nor administers its financial affairs; if it maintains an organization it does so only for the purpose of complying with legal requirements and maintaining title to property or franchises.

217. INVESTMENTS IN AFFILIATED COMPANIES

Give particulars of investments in stocks, bonds, notes, and advances of companies affiliated with respondent, included in accounts Nos. 4, "Sinking funds"; 6, "Investments in affiliated companies"; 12, "Special deposits"; and 22, "Insurance and other funds."

Entries in this schedule should be made in accordance with the definitions and general instructions given on page 207, classifying the investments by means of letters and figures in column (*b*).

Indicate by means of an arbitrary mark in column (*a*) the obligation in support of which any security is pledged, mortgaged, or otherwise encumbered, giving names and other important particulars of such obligations in footnotes.

Give totals for each class and for each subclass.

Entries in column (*c*) should show date of maturity of bonds and other evidences of indebtedness. In case obligations of the same designation mature serially, the date in column (*c*) may be reported as "Serially 19..... to 19....." In making entries in this column, abbreviations in common use in standard financial publications may be used where necessary on account of limited space.

Line No.	Lien Ref. (a)	Class No. (b)	Name of issuing company and description of security held (c)	Extent of control (d)	Investments at Close of Year — Par value of amount held at close of year: Pledged (e)	Unpledged (f)	In sinking funds, insurance funds, and deposit accounts (g)	Total par value (h)
				%	$	$	$	$
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
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24								
25								
26								
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40			TOTAL					

SUMMARY OF INVESTMENTS IN AFFILIATED COMPANIES—BY ACCOUNTS

Line No.	Account (a)	Stocks: Par value (b)	Stocks: Book value (c)	Bonds: Par value (d)	Bonds: Book value (e)
		$	$	$	$
41	(4) Sinking funds				
42	(6) Investments in affiliated companies				
43	(12) Special deposits				
44	(22) Insurance and other funds				
45	TOTAL				

217. INVESTMENTS IN AFFILIATED COMPANIES—Continued

If any of the companies included in this schedule are controlled by respondent, the percent of control should be given in column (d). In case any company listed is controlled other than through actual ownership of securities, give particulars in a footnote. In cases of joint control, give names of other parties and particulars of control.

For nonpar stock, show the number of shares in lieu of the par value in columns (e), (f), (g), (h), (j), and (l).

In reporting advances, columns (e), (f), (g), (h), (j), and (l) should be left blank. If any advances are pledged, give particulars in a footnote.

Particulars of investments made, disposed of, or written down during the year should be given in columns (j) to (n), inclusive. If the cost of any investment made during the year differs from the book value reported in column (k), explain the matter in a footnote. By "cost" is meant the consideration given minus accrued interest or dividends included therein. If the consideration given or received for such investments was other than cash, describe the transaction in a footnote.

This schedule should not include issued securities or assumed by respondent.

Investments at Close of Year		Investments Made During Year		Investments Disposed of or Written Down During Year			Dividends or Interest		Line No.
Total book value (i)		Par value (j)	Book value (k)	Par value (l)	Book value (m)	Selling price (n)	Rate (o)	Amount credited to income (p)	
$		$	$	$	$	$	%	$	
									1
									2
									3
									4
									5
									6
									7
									8
									9
									10
									11
									12
									13
									14
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									36
									37
									38
									39
									40

SUMMARY OF INVESTMENTS IN AFFILIATED COMPANIES—BY ACCOUNTS—Concluded

Notes		Advances	Amount Credited to Income			Line No.
Par value (f)	Book value (g)	Book value (h)	Dividends (i)	Interest (j)		
$	$	$	$	$		
		x x x				41
						42
		x x x				43
		x x x				44
						45

218. INVESTMENTS IN NONAFFILIATED COMPANIES

Give particulars of investments in stocks, bonds, notes, advances, and miscellaneous securities of all corporations other than affiliated companies, included in accounts Nos. 4, "Sinking funds"; 7, "Other investments"; 12, "Special deposits"; and 22, "Insurance and other funds."

Entries in this schedule should be made in accordance with the definitions and general instructions given on page 207, classifying the investments by means of letters and figures in column (b).

Indicate by means of an arbitrary mark in column (a) the obligation in support of which any security is pledged, mortgaged, or otherwise encumbered, giving names and other important particulars of such obligations in footnotes.

Give totals for each class and for each subclass.

Entries in column (c) should show date of maturity of bonds and other evidences of indebtedness. In case obligations of the same designation mature serially, the date in column (c) may be reported as "Serially 19____ to 19____." In making entries in this column, abbreviations in

Line No.	Line Rec'd (a)	Class No. (b)	Name of issuing company and description of security held (c)	Investments at Close of Year — Par value of amount held at close of year: Pledged (d)	Unpledged (e)	In sinking funds, insurance funds, and deposit accounts (f)	Total par value (g)
				$	$	$	$
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
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23							
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25							
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
37							
38							
39							
40			TOTAL				

SUMMARY OF INVESTMENTS IN NONAFFILIATED COMPANIES—BY ACCOUNTS

Line No.	Account (a)	Stocks — Par value (b)	Stocks — Book value (c)	Bonds — Par value (d)	Bonds — Book value (e)
		$	$	$	$
41	(4) Sinking funds				
42	(7) Other investments				
43	(12) Special deposits				
44	(22) Insurance and other funds				
45	TOTAL				

218. INVESTMENTS IN NONAFFILIATED COMPANIES—Concluded

common use in standard financial publications may be used where necessary on account of limited space.

For nonpar stock, show the number of shares in lieu of the par value in columns (*d*), (*e*), (*f*), (*g*), (*i*), and (*k*).

In reporting advances, columns (*d*), (*e*), (*f*), (*g*), (*i*), and (*k*) should be left blank. If any advances are pledged, give particulars in a footnote.

Particulars of investments made, disposed of, or written down during the year should be given in columns (*i*) to (*m*), inclusive. If the cost of any investment made during the year differs from the book value reported in column (*j*) explain the matter in a footnote. By "cost" is meant the consideration given minus accrued interest or dividends included therein. If the consideration given or received for such investments was other than cash, describe the transaction in a footnote.

Investments at Close of Year	Investments Made During Year		Investments Disposed of or Written Down During Year			Dividends or Interest		Line No.
Total book value (h)	Par value (i)	Book value (j)	Par value (k)	Book value (l)	Selling price (m)	Rate (n)	Amount credited to income (o)	
$	$	$	$	$	$	%	$	1
								2
								3
								4
								5
								6
								7
								8
								9
								10
								11
								12
								13
								14
								15
								16
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								24
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								26
								27
								28
								29
								30
								31
								32
								33
								34
								35
								36
								37
								38
								39
								40

SUMMARY OF INVESTMENTS IN NONAFFILIATED COMPANIES—BY ACCOUNTS—Concluded

Notes		Advances	Miscellaneous	Amount Credited to Income		Line No.
Par value (f)	Book value (g)	Book value (h)	Book value (i)	Dividends (j)	Interest (k)	
$	$	$	$	$	$	
		xxx xxx xxx				41
						42
		xxx xxx xxx				43
		xxx xxx xxx				44
						45

223. COMPANIES CONTROLLED DIRECTLY BY RESPONDENT OTHER THAN THROUGH TITLE TO SECURITIES

(For definition of control, see instructions on p. 207)

Line No.	Name of company controlled (a)	Character of Control: Sole or joint (b)	Other parties, if any, to joint agreement for control (c)	How established (d)	Extent (e)	Remarks (f)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						

224. COMPANIES CONTROLLED THROUGH NONREPORTING INTERMEDIARIES

(For definition of control, see instructions on p. 207)

Line No.	Name of company controlled (a)	Character of Control: Sole or joint (b)	Other parties, if any, to joint agreement for control (c)	How established (d)	Extent (e)	Name of intermediary through which indirect control exists (f)
31						
32						
33						
34						
35						
36						
37						
38						
39						
40						
41						
42						
43						

b

225. SECURITIES, ADVANCES, AND OTHER INTANGIBLES OWNED OR CONTROLLED THROUGH NONREPORTING CARRIER AND NONCARRIER SUBSIDIARIES

Give particulars of investments represented by securities and advances (including securities issued or assumed by respondent), and of other intangible property, indirectly owned or controlled by respondent through any subsidiary which does not report to the Commission under the provisions of Part 1 of the Interstate Commerce Act, without regard to any question of whether the company issuing the securities, or the obligor, is controlled by the subsidiary.

This schedule should include all securities, open account advances, and other intangible property owned or controlled by nonreporting companies shown in schedules 217, 218, 223, and 224, as well as those owned or controlled by any other organization or individual whose action respondent is enabled to determine.

Line No.	Class No. (a)	Name of issuing company and security or other intangible thing in which investment is made. (List on same line in second section and in same order as in first section.) (b)	Investments at Close of Year		Investments Made During Year	
			Total par value (c)	Total book value (d)	Par value (e)	Book value (f)
			$	$	$	$
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
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15						
16						
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19						
20						
21						
22						
23						
24						

Line No.	Investments Disposed of or Written Down During Year			Income accrued to subsidiary during year (j)	Names of subsidiaries in connection with things owned or controlled through them (k)
	Par value (g)	Book value (h)	Selling price (i)		
	$	$	$	$	
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25		Total			

221. SINKING FUNDS

Give the names, purposes, and other particulars of the several funds of the respondent created for the purpose of redeeming its outstanding obligations, and actually set aside in the hands of trustees or segregated in a distinct fund in the hands of the respondent's treasurer.

In column (b) give the name by which the fund is designated in the respondent's records, and in column (c) give correspondingly the letter or other mark by which the fund is indicated in the lower parts of this schedule.

In column (c) give the name of the obligation as it is carried on the respondent's records, the rate of interest (if any), and the date of maturity.

Entries in column (j) should be the sums of corresponding entries in columns (g), (h), and (i); and sums of corresponding entries in columns (f) and (j) should equal those of (k) and (l). If these tests are not satisfied, full explanation should be made.

In the third portion of this schedule give the total assets held in each fund at close of year, as well as grand totals for all funds, distributing the values in columns (n) to (s), inclusive, as called for. In column (s) show the book value of invested assets other than cash and securities. The detail of securities held at close of year should be given in schedules Nos. 217, "Investments in affiliated companies", and 218, "Investments in nonaffiliated companies."

All conversions of cash into securities, or vice versa, shall be treated as withdrawals from the fund in column (k) and as additions to the fund in other appropriate columns.

Line No.	Fund mark (a)	Name of fund (b)	Description of obligation to be redeemed through operation of fund (c)	Trustee of fund (d)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Line No.	Fund mark (e)	Balance in fund at beginning of year (f)	Additions to Fund During Year: Income from investment of fund (g)	Additions to Fund During Year: Cash appropriations to fund (h)	Additions to Fund During Year: Other additions to fund (i)	Additions to Fund During Year: Total additions to fund (j)	Withdrawals from fund during year (k)	Balance in fund at close of year (l)
		$	$	$	$	$	$	$
1								
2								
3								
4		Data for columns (g), (h), and (i) not required						
5								
6								
7								
8								
9								
10	TOTAL							

Line No.	Fund mark (m)	Assets in Fund at Close of Year: Cash in fund uninvested (n)	Securities issued or assumed by respondent: Par value (o)	Securities issued or assumed by respondent: Book value (p)	Other securities: Par value (q)	Other securities: Book value (r)	Book value of other invested assets (s)
		$	$	$	$	$	$
1							
2							
3							
4							
5							
6							
7							
8							
9							
10	TOTAL						

237. NOTES RECEIVABLE

Give particulars of the various debtors and the character of the transactions involved in the current asset account No. 13, "Notes receivable."

List every item in excess of $5,000 and state its date of issue and date of maturity.

For debtors whose balances were severally less than $5,000, a single entry may be made under a caption "Minor accounts, each less than $5,000."

State affiliated companies first and give subtotals for them and for other companies.

Line No.	Name of debtor (a)	Character of asset or of transaction (b)	Date of issue (c)	Date of maturity (d)	Balance at close of year (e) $
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15				Total	

238. ACCOUNTS RECEIVABLE

Give particulars of the various debtors and the character of the transactions involved in the current asset account No. 16, "Accounts receivable."

List every item in excess of $5,000.

For debtors whose balances were severally less than $5,000, a single entry may be made under a caption "Minor accounts, each less than $5,000."

State affiliated companies first and give subtotals for them and for other companies.

Line No.	Name of debtor (a)	Character of assets or of transaction (b)	Balance at close of year (c) $
31			
32			
33			
34			
35			
36			
37			
38			
39			
40			
41			
42			
43			
44			
45		Total	

241. INSURANCE AND OTHER FUNDS

Give the names, purposes, and other particulars of the several funds of the respondent actually set aside in the hands of trustees to provide for insurance, for employees' pensions, relief, hospital service, and the like. This schedule should not include special deposits or sinking and redemption funds; for sinking funds see schedule No. 231 (p. 215).

In column (*b*) give the name by which the fund is designated in the respondent's records, and in column (*a*) give correspondingly the letter or other mark by which the fund is indicated in the lower parts of this schedule.

In column (*c*) state clearly the purpose for which the fund is created, referring to a footnote if the space given in the column is insufficient.

Entries in column (*j*) should be the sums of corresponding entries in columns (*g*), (*h*), and (*i*); and sums of corresponding entries in columns (*f*) and (*j*) should equal those of (*k*) and (*l*). If these tests are not satisfied, full explanation should be made.

In the third portion of this schedule give the total assets held in each fund at close of year as well as grand totals for all funds, distributing the values in columns (*n*) to (*s*), inclusive, as called for. In column (*s*) show the book value of invested assets other than cash and securities. The detail of securities held at close of year should be given in schedules Nos. 217, "Investments in affiliated companies", and 218, "Investments in nonaffiliated companies."

All conversions of cash into securities, or vice versa, shall be treated as withdrawals from the fund in column (*k*) and as additions to the fund in other appropriate columns.

Line No.	Fund mark (a)	Name of fund (b)	Purpose of fund (c)	Name of trustee of fund (d)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

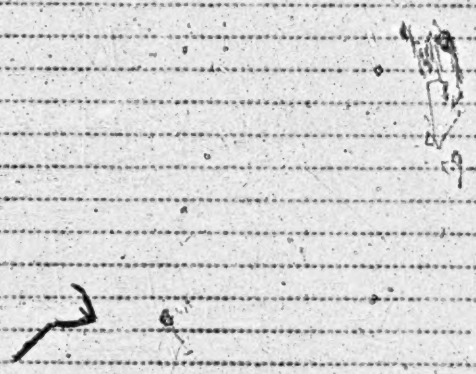
Line No.	Fund mark (e)	Balance in fund at beginning of year (f)	Additions to Fund During Year: Income from investment of fund (g)	Additions to Fund During Year: Cash appropriations to fund (h)	Additions to Fund During Year: Other additions to fund (i)	Additions to Fund During Year: Total additions to fund (j)	Withdrawals from fund during year (k)	Balance in fund at close of year (l)
		$	$	$	$	$	$	$
1								
2								
3		Data for columns (g), (h), and (i) not required						
4								
5								
6								
7								
8								
9								
10	Total							

Line No.	Fund mark (m)	Assets in Fund at Close of Year: Cash in fund uninvested (n)	Securities issued or assumed by respondent: Par value (o)	Securities issued or assumed by respondent: Book value (p)	Other securities: Par value (q)	Other securities: Book value (r)	Book value of other invested assets (s)
		$	$	$	$	$	$
1							
2							
3							
4							
5							
6							
7							
8							
9							
10	Total						

245. OTHER DEFERRED DEBITS

Give an analysis of the amount included in account No. 28, "Other deferred debits", at the close of the year, showing in detail each item or subaccount amounting to $5,000 or more. Items less than $5,000 may be combined in a single entry designated "Minor items, each less than $5,000." In case the character of any item is not fully disclosed by the entries in the columns hereunder, make a full explanation in a footnote.

Line No.	Description and character of items (a)	Amount at close of year (b)		
		$		
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46	TOTAL			



...rs of the various issues of capital stock of the ...nguishing separate issues of any general class, ...y respect.
...section list particulars of the various issues on ...d in the same order as in the first section.
...date of an authorization the date of the latest ...tion necessary to its validity should be shown; ...authorization is required to be ratified by stock- ...ion by the board of directors, but is not required ...by any State or other governmental board or officer, give the date of approval by stockholders; if the assent of a State railroad commission or other public board or officer is necessary, give the date of such assent, or if subsequent to such assent notice has to be filed with a secretary of state or other public officer and a tax or other fee has to be paid as a *condition precedent* to the validity of the issue, give the date of such payment. In case some *condition precedent* has to be complied with after the approval and ratification of the stockholders has been obtained, state, in a footnote, the particulars of such condition and of the respondent's compliance therewith.

For the purposes of this report, capital stock and other securities are considered to be *nominally issued* when certificates are signed and sealed and placed with the proper officer for sale and delivery or are pledged or otherwise placed in some special fund of the respondent. They are considered to be *actually issued* when sold to a bona fide purchaser for a valuable consideration, and such purchaser holds free from control by the respondent. All securities actually issued and not reacquired by or for the respondent are considered to be *actually outstanding*.

...s of stock (a)	Date issue was authorized (b)	PREFERRED STOCK: Dividend rate specified in contract (c)	Total amount of accumulated dividends (d)	Cumulative: To extent earned ("Yes" or "No") (e)	Cumulative: Fixed $ rate or percent specified by contract (f)	Nonaccumulative ("Yes" or "No") (g)	Other Provisions of Contract: Convertible ("Yes" or "No") (h)	Other provisions ("Yes" or "No") (i)	Participating: Fixed amount or percent (Specify) (j)	Participating: Fixed ratio with common (Specify) (k)	Par value per share (If par value, so state) (l)
		x x x x	$ x x	x x x x x	x x x x x	x x x x	x x x x	x x x x	x x x x x	x x x x x	$
		x x x x	x x	x x x x x	x x x x x	x x x x	x x x x	x x x x	x x x x x	x x x x x	
		x x x x	x x	x x x x x	x x x x x	x x x x	x x x x	x x x x	x x x x x	x x x x x	
		x x x x	x x	x x x x x	x x x x x	x x x x	x x x x	x x x x	x x x x x	x x x x x	
...anding for install-											
TOTAL		x x x x		x x x x	x x x x x	x x x x	x x x x	x x x x	x x x x x	x x x x x	x x x x

...d. (m)	PAR VALUE OF PAR-VALUE STOCK OR NUMBER OF SHARES OF NONPAR STOCK: Authenticated	Nominally Issued and: Held in special funds or in treasury or pledged (o)	Nominally Issued and: Canceled (p)	Actually Issued (q)	Reacquired and: Canceled (r)	Reacquired and: Held in special funds or in treasury or pledged (s)	STOCK ACTUALLY OUTSTANDING AT CLOSE OF YEAR: Par value of par-value stock (t)	Shares Without Par Value: Number (u)	Shares Without Par Value: Book value (v)
							$		$
x x	x x x x	x x x	x x x	x x x	x x x	x x x			

...apital stock covered by the receipts.

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251A. CAPITAL STOCK CHANGES DURING THE YEAR

Give full particulars of stocks actually or nominally issued (either original issues or reissues) and of stocks reacquired or canceled during the year.

In the second section of the schedule show the particulars of the several issues on the same lines and in the same order as in the first section.

In column (c) state whether issued for construction of new properties, for additions and betterments, for purchase of pipe line or other property, for conversion, for acquisition of securities, for reorganization, or for other corporate purposes. If an issue of securities was authorized for more than one purpose, state amount applicable to each purpose. Also give the number and date of the authorization by the public authority under whose control such issue was made, naming such authority. In column (e) include as cash all money, checks, drafts, bills of exchange, and other commercial paper payable at par on demand. For nominally issued stock, show returns in columns (a), (b), (c), and (d) only. For each class of par stock actually issued the sum of the entries in columns (e), (f), and (h), plus discounts or less premiums in column (g), should equal the entry in column (d).

Line No.	Class of stock (a)	Stocks Issued During Year: Date of issue (b)	Purpose of the issue and authority (c)	Par value (For nonpar stock show the number of shares) (d)	Net proceeds received for issue (cash or its equivalent) (e)
				$	$
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15			Total		

Line No.	Stocks Issued During Year—Concluded: Cash value of other property acquired or services received as consideration for issue (f)	Net total discounts (in black) or premiums (in red). Excludes entries in column (h) (g)	Expense of issuing capital stock (h)	Stocks Reacquired During Year: Par value (For nonpar stock show the number of shares) (i)	Purchase price (j)	Remarks (k)
	$	$	$	$	$	
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						

252. STOCK LIABILITY FOR CONVERSION OF SECURITIES OF OTHER COMPANIES

If at the close of the year respondent was subject to any liability to issue its own capital stock in exchange for outstanding securities of constituent or other companies, give full particulars thereof hereunder, including names of parties to contracts and abstracts of terms of contracts whereunder such liability exists.

353. CAPITAL STOCK INSTALLMENTS

Give particulars of installments on account of subscriptions to capital stock of respondent prior to the issuance of the stock, classified in accordance with provisions of paragraph (*B*) of account No. 51, "Capital stock."

In column (*b*), of section (*A*), should be shown the total par value of the amount of capital stock subscriptions which have not been fully paid or canceled at the close of the year; in column (*c*) the amount unpaid on such subscriptions; and in column (*d*) the amount which has been paid on such subscriptions.

In section (*B*), the number of shares of nonpar stock subscribed for should be entered in column (*b*), and in column (*c*) the total nominal value assigned to such shares that have not been fully paid or canceled at the close of the year. In column (*d*) should be shown the total amount unpaid on account of such subscriptions, and in column (*e*) the amount which has been paid on such subscriptions.

In the balance-sheet statement the total amount of subscriptions should be reported in short column (b_1); the amount unpaid on such subscriptions in short column (b_2); and the amount paid on such subscriptions in column (*c*), against account No. 54, "Capital stock installments", this return being the aggregate of entries in column (*d*) of section (*A*) and column (*e*) of section (*B*) of this schedule.

A. With Par Value

Line No.	Class of stock (a)	Total par value of subscriptions (b)	Total amount of unpaid subscriptions (c)	Total amount paid on subscriptions (d)
		$	$	$
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11	TOTAL			

B. Without Par Value

Line No.	Class of stock (a)	Total Subscriptions: Number of shares (b)	Total Subscriptions: Book liability (c)	Total amount of unpaid subscriptions (d)	Total amount paid on subscriptions (e)
			$	$	$
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31	TOTAL				

730

473 473 369

Canceled

281. FUNDED DEBT UNMATURED

Give particulars of the various unmatured bonds and other evidences of funded debt of the respondent included in account No. 55, "Funded debt unmatured" at the close of the year.

In column (a) show the name of each bond or other obligation as it is designated in the records of the respondent, classifying each obligation under the appropriate subhead as defined in the Uniform System of Accounts for Pipe Lines.

In case obligations of the same designation mature serially or otherwise at various dates, enter in column (c) the latest date of maturity and explain the matter in a footnote.

Column (d) calls for the par value of the amount of debt authorized to be incurred, as determined by the final authority whose assent is necessary to the legal validity of the issue. In case such final authority is some public officer or board, attach a footnote showing such officer or board and the date when assent was given. In all cases where any issues, whether actual or merely nominal, were made during the year, state on page 228 the purposes for which such issues were authorized as expressed in the resolution of the final authority passing on the matter.

Line No.	Name and character of obligation (a)	Nominal date of issue (b)	Date of maturity (c)	Par value of amount authorized (d)	Total par value issued and not retired at close of year (e)	Total Par Value Nominally Issued: In treasury (f)	Pledged as collateral (g)	In sinking or other funds (h)
	MORTGAGE BONDS:			$	$	$	$	$
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12	Total for mortgage bonds							
13	COLLATERAL TRUST BONDS:							
14								
15								
16								
17								
18								
19	Total for collateral trust bonds							
20	INCOME BONDS:							
21								
22								
23								
24	Total for income bonds							
25	MISCELLANEOUS OBLIGATIONS:							
26								
27								
28								
29								
30								
31								
32								
33								
34								
35								
36								
37								
38								
39								
40								
41								
42								
43								
44	Total for miscellaneous obligations							
45	RECEIPTS OUTSTANDING FOR FUNDED DEBT*							
46	GRAND TOTAL							

* State the class of funded debt covered by the receipts.

261. FUNDED DEBT UNMATURED—Concluded

Entries in column (e) should include funded debt nominally issued, nominally outstanding, and actually outstanding.

Entries should conform to the definitions of "nominally issued", "actually issued", etc., as given in the last paragraph of instructions on page 222.

If the interest accrued during the year as entered in column (e) does not aggregate the total accrual for the year on any security, explain the discrepancy. Entries in this column should include interest accrued on funded debt reacquired or retired during the year, although no portion of the issue is actually outstanding at the close of the year. Entries in column (p) should be amounts charged to construction, under instructions 26 (K), in the Uniform System of Accounts for Pipe Lines.

In determining the entries for column (g), do not treat any interest as paid unless the liability of the respondent in respect to it is extinguished. Deposits of cash with banks and other fiscal agents for the payment of interest coupons should not be reported as payments of such interest until actually paid to coupon holders or others under such circumstances as to relieve the respondent from further liability.

Line No.	Total Par Value Nominally Outstanding			Total par value actually outstanding at close of year	Interest Provisions		Amount of interest accrued during year charged to income	Amount of interest charged to construction or other investment account included in column (e)	Amount of interest paid during year
	In treasury (f)	Pledged as collateral (g)	In sinking or other funds (h)	(i)	Rate per cent per annum (m)	Dates due (n)	(o)	(p)	(q)
	$	$	$	$			$	$	$
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
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24									
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26									
27									
28									
29									
30									
31									
32									
33									
34									
35									
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									
46									

261P. FUNDED DEBT (MATURED AND UNMATURED) CHANGES DURING THE YEAR

Give particulars of funded debt actually or nominally issued (either original issues or reissues); funded debt assumed; and funded debt reacquired or canceled during the year. Include matured and unmatured funded debt changes during the year. In column (c) state whether issued for the purchase of a complete pipe line; constructing and equipping new plant; or improvements to or extension of existing plant; for refunding or paying outstanding securities, for acquisition of securities, for reorganization, or for cash, etc. If an issue of securities was authorized for more than one purpose, state amount applicable to each purpose. Also give the number and date of authorization by the public authority under whose control such issue was made, naming such authority. In column (e) include as cash all money, checks, drafts, bills of exchange, and other commercial paper payable at par on demand. For nominally issued securities, show returns in columns (a), (b), (c), and (d) only.

For each class of funded debt actually issued, the sum of the entries in columns (e), (f), and (h), plus discounts or less premiums in column (g), should equal the entry in column (d). For definition of expense, reportable in column (h), see general instructions 2 (I) on page 3 of the Uniform System of Accounts for Pipe Lines.

Line No.	Name of obligation (a)	Funded Debt Issued During Year: Date of issue (b)	Purpose of the issue and authority (c)	Par value (d) $	Net proceeds received for issue (cash or its equivalent) (e) $
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21			Total		

Line No.	Funded Debt Issued During Year—Concluded: Cash value of other property acquired or services received as consideration for issue (f) $	Net total discounts (in black) or premiums (in red). Excludes entries in column (h) (g) $	Expense of issuing funded debt (h) $	Funded Debt Reacquired During Year: Amount reacquired: Par value (i) $	Purchase price (j) $	Remarks (k)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						

261B. SECURITY FOR FUNDED DEBT UNMATURED

Give particulars of the property of the respondent mortgaged, pledged, or otherwise encumbered as security for the unmatured funded debt of the respondent at the close of the year.

Give a footnote reference to each sinking fund required to be established for the redemption or retirement of funded debt, naming the fund and referring to the page and schedule of this report wherein particulars of such fund are shown; if no such fund has been established, state fully the reasons why the sinking fund requirements have not been complied with. Give an abstract or synopsis of the contract provisions governing the establishment and maintenance of each such fund.

The respondent may, in lieu of giving the particulars called for in this schedule, furnish copies of all mortgages, trust deeds, and equivalent instruments in force at the close of the year, or give reference to copies of such instruments previously filed with the Commission. All instruments, copies of which are filed or referred to, should be listed in column (a).

If the respondent has mortgaged or pledged any of its property for the purpose of securing the payment of any debt for which some other company is primarily responsible, give particulars of such mortgage or pledge also, and state the name of the primary debtor. Show what security has been taken by the respondent in connection with the loan of its credit.

Line No.	Designation of mortgage, pledge, or other lien (a)	Plant and equipment mortgaged (b)	Securities, income, etc., mortgaged or pledged (c)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

263. RECEIVERS' CERTIFICATES

Give particulars of all unmatured issues of receivers' certificates, included in account No. 56, "Receivers' certificates", which were liens on the property of the respondent at any time within the year. In case any entries are made in column (h), explain in a footnote how the funding or other disposition was effected. Entries in column (m) should include the interest accrued on receivers' certificates retired during the year. If any portion of interest accrued during the year was charged to cost of property, under Instructions 36 (K), in the Uniform System of Accounts for Pipe Lines, give particulars in a footnote. Particulars of matured issues of receivers' certificates, included in account No. 64, "Funded debt matured unpaid", shall be given in schedule 268 on page 231.

Line No.	Date of authorization of issue (a)	Amount authorized to be issued (b)	Date of actual issue (c)	Date of maturity (d)	Amount actually issued during year (e)	Total amount actually issued to close of year (f)	Portion of Principal: Paid during year (g)	Portion of Principal: Funded or otherwise disposed of during year (h)	Amount Actually Outstanding at Close of Year: Principal (i)	Amount Actually Outstanding at Close of Year: Interest matured and unpaid (j)	Amount Actually Outstanding at Close of Year: Interest accrued not due (k)
		$			$	$	$	$	$	$	$
41											
42											
43											
44											
45											
46	TOTAL										

Line No.	Rate per annum (l)	Interest During Year: Amount accrued (m)	Interest During Year: Amount paid (n)	Nominally issued and nominally outstanding at close of year (o)	Remarks (p)
	%	$	$	$	
41					
42					
43					
44					
45					
46	TOTAL				

264. NONNEGOTIABLE DEBT TO AFFILIATED COMPANIES

Give full particulars of the investment advances to respondent from affiliated companies, as defined in account No. 57, "Nonnegotiable debt to affiliated companies", in the Uniform System of Accounts for Pipe Lines. If any such debt is evidenced by notes, the total amount of such indebtedness to each creditor company may be separately shown. If any portion of interest accrued during the year was charged to cost of property, under instructions 30 (K), in the Uniform System of Accounts for Pipe Lines, give particulars in a footnote. Entries in columns (e) and (f) should include interest accruals and interest payments on nonnegotiable debt retired during the year, even though no portion of the debt remained outstanding at the close of the year.

Line No.	Name of creditor company (a)	Rate of interest (b)	Balance at beginning of year (c)	Balance at close of year (d)	Interest accrued during year (e)	Interest paid during year (f)
		%	$	$	$	$
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12	TOTAL					

266. NOTES PAYABLE

Give particulars of the various creditors and the character of the transactions involved in the current liability account No. 58, "Notes payable."

List every item in excess of $5,000 and state its date of issue and date of maturity.

For creditors whose balances were severally less than $5,000, a single entry may be made under a caption "Minor accounts, each less than $5,000."

Entries in columns (*g*) and (*h*) should include interest accruals and interest payments on notes payable retired during the year, even though no portion of the obligation remained outstanding at the close of the year.

State affiliated companies first and give subtotals for them and for other companies.

Line No.	Name of creditor (a)	Character of liability or of transaction (b)	Date of issue (c)	Date of maturity (d)	Rate of interest (e)	Balance at close of year (f)	Interest accrued during year (g)	Interest paid during year (h)
					%	$	$	$
1								
2								
3								
4								
5								
6								
7								
8								
9					TOTAL			

267. ACCOUNTS PAYABLE

Give particulars of the various creditors and the character of the transactions involved in the current liability account No. 61, "Accounts payable."

List every item in excess of $5,000.

For creditors whose balances were severally less than $5,000, a single entry may be made under a caption "Minor accounts, each less than $5,000."

State affiliated companies first and give subtotals for them and for other companies.

Line No.	Name of creditor (a)	Character of liability or of transaction (b)	Balance at close of year (c)
			$
21			
22			
23			
24			
25			
26			
27			
28			
29		TOTAL	

268. FUNDED DEBT MATURED UNPAID

Give particulars for each security outstanding included in account No. 64, "Funded debt matured unpaid." Entries in columns (*g*) and (*h*) should include interest accruals and interest payments on matured funded debt retired during the year, even though no portion of the debt remained outstanding at the close of the year.

Line No.	Name of security (a)	Reason for nonpayment at maturity (b)	Date of issue (c)	Date of maturity (d)	Rate of interest (e)	Balance at close of year (f)	Interest accrued during year (g)	Interest paid during year (h)
					%	$	$	$
31								
32								
33								
34								
35								
36								
37								
38								
39					TOTAL			

285. ACCRUED DEPRECIATION—CARRIER PROPERTY

Give particulars of the credits and debits made to account No. 74, "Accrued depreciation—carrier property", during the year. If any entries are made for "Other credits" or "Other debits", state the facts occasioning such entries. A debit balance in columns (b) or (i) for any primary account should be shown in red.

Line No.	Account (a)		Balance at beginning of year (b)	Credits: Charged to accounts Nos. 613, 663, and 763 (c)	Credits: Other credits (specified) (d)	Credits: Total credits (e)	Debits: Net charge from retirement of carrier property (f)	Debits: Other debits (specified) (g)	Debits: Total debits (h)	Balance at close of year (i)
	Gathering Lines		$	$	$	$	$	$	$	$
1	(102) Rights-of-way									
2	(103) Line pipe	602-652								
3	(104) Line-pipe fittings	602-654								
4	(105) Pipe-line construction	604-654								
5	(106) Buildings	604-654								
6	(107) Boilers									
7	(108) Pumping equipment	605-655								
8	(109) Machine tools and machinery									
9	(110) Other station equipment									
10	(111) Oil tanks	606-656								
11	(112) Delivery facilities	607-657								
12	(113) Communication systems	608-658								
13	(114) Office furniture and equipment	609-659								
14	(115) Vehicles and other work equipment	610-660								
15	(116) Other property	611-661								
16	Total									
	Trunk Lines									
17	(152) Rights-of-way									
18	(153) Line pipe									
19	(154) Line-pipe fittings									
20	(155) Pipe-line construction									
21	(156) Buildings									
22	(157) Boilers									
23	(158) Pumping equipment									
24	(159) Machine tools and machinery									
25	(160) Other station equipment									
26	(161) Oil tanks									
27	(162) Delivery facilities									
28	(163) Communication systems									
29	(164) Office furniture and equipment									
30	(165) Vehicles and other work equipment									
31	(166) Other property									
32	Total									
	General									
33	(176) Buildings	604-654								
34	(179) Machine tools and machinery	605-655								
35	(183) Communication systems	608-658								
36	(184) Office furniture and equipment	609-659								
37	(185) Vehicles and other work equipment	610-660								
38	(186) Other property	611-661								
39	Total									
40	Grand Total									

41 In addition to the amounts returned in column (c), accounts 613, 663, and 763 were charged with $..... for depreciation on material and supply stock, and with $..... for amortization of property. If the sum of the amounts
42 shown here and the total of column (c) are different from the sum of the charges to operating expenses for depreciation as returned in schedule 220, the discrepancy should be explained in a footnote.

285A. DEPRECIATION BASE AND RATES

1. Show in columns (b) and (c) for each depreciable carrier property account the balance at the beginning and end of the year, respectively, used in computing depreciation charges. The average depreciation base in column (d) should be determined for each such depreciable account by adding together the base used for each month during the year and then dividing the total by 12.

2. If composite annual depreciation rates are prescribed, those in effect at the close of the year should be shown in column (e). If component rates are prescribed, the composite rates to be shown in column (e) should be computed from the charges developed for December by application of the prescribed component rates. Whether component or composite rates are prescribed, the entries on lines 16, 32, 39, and 40 of column (e) should be computed from December depreciation charges.

3. Information to be included in columns (b) and (c) of lines 41 to 47 inclusive is for reconciliation of the returns in this schedule with those in schedule 211.

4. Entries on line 45 should agree with totals for the beginning and end of the year in columns (b) and (c), respectively, of schedule 286, "Amortization Base and Reserve." Amounts included in line 45, "Values being amortized," should be excluded from items shown on lines 41 to 44, inclusive.

Line No.	Account (a)	Depreciation Base: Balance at beginning of year (b)	Depreciation Base: Balance at close of year (c)	Depreciation Base: Average balance for the year (d)	Annual composite rates (e)
		$	$	$	%
	Depreciable Carrier Property—Gathering Lines				
1	(102) Rights-of-way				
2	(103) Line pipe				
3	(104) Line-pipe fittings				
4	(105) Pipe-line construction				
5	(106) Buildings				
6	(107) Boilers				
7	(108) Pumping equipment				
8	(109) Machine tools and machinery				
9	(110) Other station equipment				
10	(111) Oil tanks				
11	(112) Delivery facilities				
12	(113) Communication systems				
13	(114) Office furniture and equipment				
14	(115) Vehicles and other work equipment				
15	(116) Other property				
16	All depreciable gathering lines accounts				
	Depreciable Carrier Property—Trunk Lines				
17	(152) Rights-of-way				
18	(153) Line pipe				
19	(154) Line-pipe fittings				
20	(155) Pipe-line construction				
21	(156) Buildings				
22	(157) Boilers				
23	(158) Pumping equipment				
24	(159) Machine tools and machinery				
25	(160) Other station equipment				
26	(161) Oil tanks				
27	(162) Delivery facilities				
28	(163) Communication systems				
29	(164) Office furniture and equipment				
30	(165) Vehicles and other work equipment				
31	(166) Other property				
32	All depreciable trunk lines accounts				
	Depreciable Carrier Property—General				
33	(176) Buildings				
34	(179) Machine tools and machinery				
35	(183) Communication systems				
36	(184) Office furniture and equipment				
37	(185) Vehicles and other work equipment				
38	(186) Other property				
39	All depreciable general accounts				
40	All depreciable carrier property accounts				
	Nondepreciable Carrier Property (See instruction 3)				
41	(101—151—171) land				
42	(191) Construction work in progress				
43	(192) Unadjusted investments				
44	(193) Acquisition adjustment				
45	Values being amortized (see instruction 4)				
46	All nondepreciable carrier property				
47	Total investment in carrier property				

286. AMORTIZATION BASE AND RESERVE

Show in columns (b) to (e) for each item the cost of pipe-line property used as the base in computing amortization charges included in accounts Nos. 314, "Miscellaneous debits," and 613, 663, and 763, "Depreciation," of the accounting company.

Show in columns (f) to (i) for each item the balances at the beginning and close of the year and the total credits and debits during the year in account No. 75, "Amortization reserve."

If amounts represented in column (g) are different from corresponding charges to accounts Nos. 314, 613, 663, and 763, for the same property, such differences should be explained in detail.

Adjustments included in column (h), affecting operating expenses, should be fully explained.

Each defense project amounting to $10,000 or more should be briefly described as to kind of property. Location of property should not be stated. Items less than $10,000 may be combined in a single entry designated "Minor items, —— in number, each less than $10,000."

Line No.	Item (a)	Base: Balance at beginning of year (b)	Base: Debits during year (c)	Base: Credits during year (d)	Base: Balance at close of year (e)	Reserve: Balance at beginning of year (f)	Reserve: Credits during year (g)	Reserve: Debits during year (h)	Reserve: Balance at close of year (i)
		$	$	$	$	$	$	$	$
1	Property other than defense projects								
2	(1) Investment in carrier property								
3	(102) Unadjusted investments								
4	(103) Acquisition adjustment								
5	All other carrier property accounts								
6	(2) Cost of organization								
7	Total other than defense projects								
8	Defense projects (describe):								
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									
36	Total defense projects								
37	Grand Total								

290. OTHER DEFERRED CREDITS

Give an analysis of the amount included in account No. 78, "Other deferred credits", at the close of the year, showing in detail each item or subaccount amounting to $5,000 or more. Items less than $5,000 may be combined into a single entry designated "Minor items, each less than $5,000." In case the character of any item is not fully disclosed by the entries in the columns hereunder, make a full explanation in a footnote.

Line No.	Description and character of items (a)	Amount at close of year (b)		
		$		
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30	TOTAL			

741 A

291. UNEARNED SURPLUS

Give the information called for below concerning changes in account No. 80, "Unearned surplus," during the year. In column (a) give a brief description of the items added or deducted and in column (b) insert the contra account number to which the amount stated in column (c) was charged or credited.

Line No.	Item (a)	Contra account number (b)	Amount (c)
			$
1	Balance at beginning of year	X X X	
2	Additions during the year (describe):		
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13	TOTAL ADDITIONS	X X X	
14	Deductions during the year (describe):		
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25	TOTAL DEDUCTIONS	X X X	
26	Balance at close of year	X X X	

292. APPROPRIATED EARNED SURPLUS

Give an analysis of the amount in account No. 81, "Appropriated earned surplus," at the close of the year.

Line No.	Class of appropriation (a)	Balance at close of year (b)
		$
41	Additions to property through income and surplus	
42	Debt retired through income and surplus	
43	Sinking fund reserves	
44	Miscellaneous fund reserves	
45	Appropriated surplus not specifically invested	
46	Other appropriations (specify):	
47		
48		
49		
50		
51		
52		
53		
54		
55		
56		
57		
58		
59		
60		
61		
62		
63		
64	TOTAL	

300. EARNED SURPLUS STATEMENT

Show hereunder the amounts included in the "Earned surplus" accounts of the respondent for the year, classified in accordance with the Uniform System of Accounts for Pipe Lines.

Line No.	Item (a)	Debits (b)	Credits (c)	Remarks (d)
		$	$	
1	(82) Earned surplus at beginning of year (p. 201)			
2	(301) Income balance (p. 301)			
3	(302) Credits from retired carrier property (p. 307)	x x		
4	(303) Delayed income credits (p. 307)	x x		
5	(304) Miscellaneous credits (p. 307)	x x		
6	(311) Delayed income debits (p. 307)		x x	
7	(312) Debits from retired carrier property (p. 307)		x x	
8	(314) Miscellaneous debits (p. 307)		x x	
9	(315) Miscellaneous reservations of surplus (p. 306)		x x	
10	(316) Stock discount extinguished through surplus		x x	
11	(317) Dividend appropriations of surplus (p. 300)		x x	
12	(82) Earned surplus at end of year (p. 201)		x x	
13	TOTAL			

301. DIVIDEND APPROPRIATIONS

Give particulars of each dividend declared, payable from the income of the year or from surplus. If any such dividend was payable in anything other than cash, the consideration shall be described in a footnote with sufficient particularity to identify it. If an obligation of any character has been incurred for the purpose of procuring funds for the payment of any dividend or for the purpose of replenishing the treasury of the respondent after payment of any dividend, give full particulars in a footnote. Returns for dividends on nonpar stock should show the amount declared per share in columns (b) and (c), and in column (d) the number of shares on which the dividends were declared. If any class of stock received a return not reportable in this schedule, or if any special comment regarding "Rate percent" is desired, give particulars in a footnote.

Line No.	Name of security on which dividend was declared (a)	Rate Percent		Par value of amount on which dividend was declared (d)			Distribution of Charge						Date	
		Regular (b)	Extra (c)				Income (e)			Surplus (f)			Declared (g)	Payable (h)
				$			$			$				
31														
32														
33														
34														
35														
36														
37														
38														
39														
40														
41														
42														
43														
44	TOTAL	x x	x x	x x	x x	x x								

302. INCOME STATEMENT

Give the particulars called for from the Income Accounts of the respondent for the year. The entries in this statement should be determined in accordance with the rules prescribed in the Uniform System of Accounts for Pipe Lines, and should be consistent with the details stated on the pages referred to.

Line No.	Item (a)	Amount applicable to the year (b)			Remarks (c)
		$			
1	OPERATING INCOME	x x	x x	x x	
2	(401) Operating revenues (p. 302)				
3	(411) Operating expenses (p. 303)				
4	Net revenue from operations*				
5	(412) Pipe-line taxes:	x x	x x	x x	
6	(A) Income and excess-profits taxes				
7	(B) Other taxes				
8	Total pipe-line taxes (p. 304)				
9	Pipeline operating income*				
10	(403) Income from miscellaneous operating physical property (p. 302)				
11	(413) Taxes on miscellaneous operating physical property (p. 302)				
12	Miscellaneous operating income*				
13	Total operating income*				
14	OTHER INCOME	x x	x x	x x	
15	(404) Income from miscellaneous nonoperating physical property (p. 305)				
16	(405) Dividend income (p. 306)				
17	(406) Interest income (p. 306)				
18	(407) Income from insurance and other r ve funds				
19	(408) Release of premium on funded debt				
20	(409) Miscellaneous income				
21	Total other income				
22	Total income*				
23	MISCELLANEOUS DEDUCTIONS FROM TOTAL INCOME	x x	x x	x x	
24	(414) Miscellaneous taxes				
25	(415) Miscellaneous income charges				
26	(423) Bad debts				
27	Total miscellaneous deductions				
28	Income available for fixed charges*				
29	FIXED CHARGES	x x	x x	x x	
30	(416) Interest on long-term debt				
31	(417) Interest on unfunded debt				
32	(418) Amortization of discount on funded debt				
33	Total fixed charges				
34	Income after fixed charges*				
35	CONTINGENT CHARGES	x x	x x	x x	
36	(419) Contingent interest on debt				
37	Net income*				
38	DISPOSITION OF NET INCOME	x x	x x	x x	
39	(420) Miscellaneous reservations of income (p. 306)				
40	(421) Stock discount extinguished through income				
41	(422) Dividend appropriations of income (p. 300)				
42	Total appropriations of income				
43	(301) Income balance*				

*If deficit, show in red.

310. OPERATING REVENUE ACCOUNTS

State the pipe-line operating revenues of the respondent for the year, classified in accordance with the Uniform System of Accounts for Pipe Lines.

Line No.	Operating revenue accounts (a)	Amount of revenue for the year (b)	Remarks (c)
		$	
1	GATHERING LINES	x x	
2	(501) Transportation revenue		
3	(502) Storage and demurrage revenue		
4	(503) Rent revenues		
5	(504) Miscellaneous revenue		
6	TOTAL		
7	TRUNK LINES	x x	
8	(551) Transportation revenue		
9	(552) Storage and demurrage revenue		
10	(553) Rent revenues		
11	(554) Miscellaneous revenue		
12	TOTAL		
13	GRAND TOTAL		

312. INCOME FROM MISCELLANEOUS OPERATING PHYSICAL PROPERTY

State the revenues and expenses of the respondent during the year from each class of operated properties of the character provided for in account No. 403, "Income from miscellaneous operating physical property", in the Uniform System of Accounts for Pipe Lines..

Line No.	General description of property (a)	Total revenues (b)	Total expenses (c)	Income before taxes (d)	Taxes for the year (e)
		$	$	$	$
31					
32					
33					
34					
35					
36					
37					
38					
39					
40					
41					
42					
43					
44	TOTAL				

320. OPERATING EXPENSE ACCOUNTS

State the pipe-line operating expenses of the respondent for the year, classifying them in accordance with the Uniform System of Accounts for Pipe Lines.

Line No.	Operating expense accounts (a)	Amount of operating expenses for the year (b)			Operating expense accounts (c)	Amount of operating expenses for the year (d)		
		$				$		
1	GATHERING LINES	x x	x x	x x	TRUNK LINES	x x	x x	x x
2	I. Maintenance	x x	x x	x x	I. Maintenance	x x	x x	x x
3	(601) Superintendence				(651) Superintendence			
4	(602) Repairs of pipe lines				(652) Repairs of pipe lines			
5	(603) Changing of line construction				(653) Changing of line construction			
6	(604) Repairs of buildings				(654) Repairs of buildings			
7	(605) Repairs of pumping stations				(655) Repairs of pumping stations			
8	(606) Repairs of oil tanks				(656) Repairs of oil tanks			
9	(607) Repairs of delivery facilities				(657) Repairs of delivery facilities			
10	(608) Repairs of communication systems				(658) Repairs of communication systems			
11	(609) Repairs of office furniture and equipment				(659) Repairs of office furniture and equipment			
12	(610) Repairs of vehicles and other work equipment				(660) Repairs of vehicles and other work equipment			
13	(611) Repairs of other property				(661) Repairs of other property			
14	(612) Other expenses				(662) Other expenses			
15	(613) Depreciation				(663) Depreciation			
16	(614) Extraordinary retirements				(664) Extraordinary retirements			
17	TOTAL				TOTAL			
18	II. Transportation	x x	x x	x x	II. Transportation	x x	x x	x x
19	(621) Superintendence				(671) Superintendence			
20	(622) Operation of gathering pipe lines				(672) Operation of trunk pipe lines			
21	(623) Operation of pumping stations				(673) Operation of pumping stations			
22	(624) Operation of oil tanks				(674) Operation of oil tanks			
23	(625) Operation of delivery facilities				(675) Operation of delivery facilities			
24	(626) Operation of communication systems				(676) Operation of communication systems			
25	(627) Oil shortage				(677) Oil shortage			
26	(628) Other expenses				(678) Other expenses			
27	TOTAL				TOTAL			
28	III. General Office Salaries and Expenses	x x	x x	x x	III. General Office Salaries and Expenses	x x	x x	x x
29	(631) General office salaries				(681) General office salaries			
30	(632) General office supplies and expenses				(682) General office supplies and expenses			
31	(633) Law expenses				(683) Law expenses			
32	TOTAL				TOTAL			
33	IV. Other Operating Expenses	x x	x x	x x	IV. Other Operating Expenses	x x	x x	x x
34	(634) Injuries to persons*				(684) Injuries to persons*			
35	(635) Relief and pensions**				(685) Relief and pensions**			
36	(636) Damage to property				(686) Damage to property			
37	(637) Stationery and printing				(687) Stationery and printing			
38	(638) Insurance				(688) Insurance			
39	(639) Casualty losses				(689) Casualty losses			
40	(640) Operating rents (p. 402)				(690) Operating rents (p. 402)			
41	(641) Other expenses				(691) Other expenses			
42	TOTAL				TOTAL			
43	TOTAL—GATHERING LINES				TOTAL—TRUNK LINES			
44					GRAND TOTAL—OPERATING EXPENSES			

45 Operating ratio (ratio of operating expenses to operating revenues—percent): Gathering lines _____ Trunk lines _____ Total _____

*Includes $_____, representing payments for personal injuries to present and former employees.

**Includes $_____, representing pension payments to employees.

330. PIPE-LINE TAXES

Give the particulars called for with respect to the taxes accrued on carrier properties and charged to account No. 412, "Pipe-line taxes," of the respondent's Income Account for the year.

If during the year an important adjustment was made in account No. 412 for taxes applicable to a prior year, state in a footnote full particulars concerning same.

A. Other Than U. S. Government Taxes

Line No.	Name of State (a)	Amount (b)	Name of State (c)	Amount (d)
		$		$
1	Alabama		New Mexico	
2	Arizona		New York	
3	Arkansas		North Carolina	
4	California		North Dakota	
5	Colorado		Ohio	
6	Connecticut		Oklahoma	
7	Delaware		Oregon	
8	Florida		Pennsylvania	
9	Georgia		Rhode Island	
10	Idaho		South Carolina	
11	Illinois		South Dakota	
12	Indiana		Tennessee	
13	Iowa		Texas	
14	Kansas		Utah	
15	Kentucky		Vermont	
16	Louisiana		Virginia	
17	Maine		Washington	
18	Maryland		West Virginia	
19	Massachusetts		Wisconsin	
20	Michigan		Wyoming	
21	Minnesota		District of Columbia	
22	Mississippi		Other (specify):	x x
23	Missouri			
24	Montana			
25	Nebraska			
26	Nevada			
27	New Hampshire			
28	New Jersey		TOTAL—Other Than U. S. Government Taxes	

B. U. S. Government Taxes

Line No.	Kind of tax (a)	Amount (b)	Kind of tax (c)	Amount (d)
		$		$
41	Income taxes:	x x	Other U. S. taxes (specify):	x x
42	Declared value excess profits $	x x		
43	Normal	x x		
44	Surtax	x x		
45	Excess profits			
46	Old-age retirement			
47	Unemployment insurance			
48	Capital stock			
49	Transportation tax paid by respondent		TOTAL U. S. Government Taxes	
50	GRAND TOTAL (account 412)			

340. INCOME FROM MISCELLANEOUS NONOPERATING PHYSICAL PROPERTY

Give particulars concerning important properties of the respondent the income from which is credited to account No. 404, "Income from miscellaneous nonoperating physical property." If the income accrued relates to only a part of the year, give particulars in a footnote.

Line No.	Description of Property		Name of present leaseholder	Cost of property
	Name (a)	Location (b)	(c)	(d)
				$
1				
2				
3				
4				
5			Total	

Line No.	Termini		Gathering		Trunk				Income accrued during year
	From— (e)	To— (f)	Miles (g)	Size of line (h)	Miles (i)		Size of line (j)		(k)
									$
1									
2									
3									
4									
5		Total		x x		x x		x x	

340A. ABSTRACTS OF TERMS AND CONDITIONS OF LEASES

Give briefly any changes since the beginning of the year in the terms and conditions of the important leases under which the above-stated income is derived. For any important leases executed during the year give a brief abstract of the terms and conditions, showing particularly (1) the date of the grant, (2) the chain of title (in case of assignment or subletting) and dates of transfer connecting the original parties with the present parties, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease will terminate, or, if the date of termination has not yet been fixed, the provisions governing the termination of the lease.

Copies of leases may be filed in lieu of abstracts above called for.

345. DIVIDEND INCOME AND INTEREST INCOME

Give a detailed analysis of amounts credited to accounts Nos. 405, "Dividend income", and 406, "Interest income", classified in accordance with the Uniform System of Accounts for Pipe Lines.

Line No.	Item (a)	Dividend income (b)	Interest income (c)
		$	$
1	Income from securities shown in schedule 217		
2	Income from securities shown in schedule 218		
3	Income from temporary cash investments		
4	Interest charged to construction		
5	Other credits (specified):		
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25	TOTAL		

351. MISCELLANEOUS RESERVATIONS OF INCOME AND SURPLUS

State the various appropriations made by the respondent and charged to accounts Nos. 420, "Miscellaneous reservations of income", or 315, "Miscellaneous reservations of surplus", during the year.

Line No.	Purpose of appropriation (a)	Amount charged to income (b)	Amount charged to surplus (c)
		$	$
31			
32			
33			
34			
35			
36			
37			
38			
39			
40	TOTAL		

360. MISCELLANEOUS ITEMS IN EARNED SURPLUS ACCOUNTS FOR THE YEAR

Give a detailed analysis of accounts 302, "Credits from retired carrier property"; 303, "Delayed income credits"; 304, "Miscellaneous credits"; 311, "Delayed income debits"; 312, "Debits from retired carrier property"; and 314, "Miscellaneous debits"; the totals for which are stated on page 300. The classification should be made in accordance with the Uniform System of Accounts for Pipe Lines. Each item amounting to $5,000 or more should be stated; items less than $5,000 in any account may be combined in a single entry designated "Minor items, each less than $5,000." State subtotals for each account.

Line No.	Sub-account No. (a)	Item (b)	Debits (c)	Credits (d)
			$	$
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				
34				
35				
36				
37				
38				
39				
40				
41				
42				
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				

400. STATISTICS OF OPERATIONS

Give particulars by States and fields for crude oil, and by States and points of origin for refined oils received and transported during the year. As used herein, the term *crude oil* means oil in its natural state; not altered, refined, or prepared for use by any process, and *refined oils* means oils that have been refined, altered, or processed for use, such as fuel oil and gasoline. Natural gasoline or other similar products, whenever blended with crude oil in transit, should be classified and reported as crude oil in this schedule. In column (*b*) show all oils received by the respondent from connecting carriers reporting to the Interstate Commerce Commission. In column (*c*) show all oils originated on respondent's gathering lines and in column (*d*) all oils received into respondent's system from all sources, except receipts shown in columns (*b*) and (*c*). Entries in column (*e*) should be the sums of corresponding entries in columns (*b*), (*c*), and (*d*). In column (*f*) show all oils delivered to connecting carriers reporting to the Interstate Commerce Commission. In column (*g*) show all oils terminated on respondent's gathering lines, and in column (*h*) all oils delivered out of respondent's system, except deliveries shown under columns (*f*) and (*g*). Entries in column (*i*) should be the sums of corresponding entries in columns (*f*), (*g*), and (*h*). Returns in "Note" should be estimated, if not actually shown on respondent's records.

Line No.	State and field or point of origin (a)	Number of Barrels Received Into System: From connecting carriers (b)	Originated: On gathering lines (c)	Originated: On trunk lines (d)	Total received into system (e)	Number of Barrels Delivered Out of System: To connecting carriers (f)	Terminated: On gathering lines (g)	Terminated: On trunk lines (h)	Total delivered out of system (i)
	CRUDE OIL								
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21	TOTAL								
	REFINED OIL								
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50	TOTAL								
51	GRAND TOTAL								

NOTE.—Total number of barrel-miles (trunk lines only): Crude oil ..... ; Refined oils .....
Total number of barrels of oil having trunk-line movement: Crude oil ..... ; Refined oils .....

Annual Report to the Interstate Commerce Commission

410. MILES OF PIPE LINE OPERATED AT CLOSE OF YEAR

Give, by States and fields, the termini, miles of all pipe line operated, and size of each line, at close of year. Information concerning gathering lines should be given in columns (*d*) and (*e*); trunk lines used for the transportation of crude oil in columns (*f*) and (*g*); and trunk lines devoted to the movement of refined oils in columns (*h*) and (*i*). In columns (*j*) and (*k*) should be shown all increases and in columns (*l*) and (*m*) all decreases in miles of pipe line operated.

OWNED BY RESPONDENT

Line No.	Name of company, State, and field	Termini		Operated at Close of Year						Changes During the Year			
				Gathering lines		Trunk lines				Increases		Decreases	
						For crude oil		For refined oils					
		From—	To—	Miles	Size of line	Miles	Size of line	Miles	Size of line	Gathering lines	Trunk lines	Gathering lines	Trunk lines
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
12													
13													
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
24													
25	TOTAL	x x x x x x	x x x x x x		x x x		x x x		x x x				

OWNED BY OTHERS

30													
31													
32													
33													
34													
35													
36													
37													
38													
39													
40	TOTAL	x x x x x x	x x x x x x		x x x		x x x		x x x				
41	GRAND TOTAL	x x x x x x	x x x x x x		x x x		x x x		x x x				

420. OPERATING RENTS

Give particulars of the rents payable during the year, for property used in transportation service, included in accounts Nos. 640, 690, and 790, as defined in the Uniform System of Accounts for Pipe Lines. Each item amounting to $1,000 or more should be listed, all others may be combined in a single entry designated "Minor items, each less than $1,000."

Line No.	Name of lessor (a)	Location of property (b)	Description of property (c)	Rent accrued during year (d)
				$
1				
2				
3				
4				
5				
6				
7				
8				
9				
10			TOTAL	

420A. ABSTRACTS OF LEASEHOLD CONTRACTS

Give briefly any changes since the beginning of the year in the terms and conditions of the leases under which the respondent rents a complete pipe line or section thereof. If any such leases have been executed during the year, give brief abstracts of the terms and conditions thereof, showing particularly (1) the date of the lease, (2) the chain of title and dates of transfers connecting the original lessee with the respondent in case of assignment or subletting, (3) the basis on which the amount of the annual rent is determined, and (4) the date when the lease is to terminate, or, if such date has not yet been determined, the provisions governing its determination.

In lieu of the abstracts here called for, the respondent may file copies of lease agreements and give specific references to copies heretofore filed with the Commission.

561. EMPLOYEES AND THEIR COMPENSATION

Give the number of employees, by classes, in the service of the respondent, and state the total compensation, including payments of every character made to each class of employees during the year. If any compensation was paid or is payable under labor awards of the current year, include the amount applicable to the current year in column (o) and show the portion applicable to prior years (back pay) in a footnote, by classes of employees. For purposes of this report, labor awards are intended to cover adjustments resulting from the decisions of Wage Boards and voluntary awards by the respondent incident thereto. The assignment of employees should accord as nearly as possible with the classes listed. If the regular duties of an employee are such as to make him includible in two or more classes, he should be assigned to the class that is indicated by the greater part of his duties, and his compensation assigned to the same class.

For the purpose of the subjoined statement the word *employees* is intended to include every person in the service of the respondent subject to its continuing authority to supervise and direct the manner of rendition of his service. Persons engaged to render only specifically defined service and not subject to the continuing authority of the respondent to supervise and control their acts, such as lawyers retained only for specific cases and not under general or continuing retainer, are not to be included as employees.

The representative number of employees in service for entry in column (n) is required to be the average of 12 counts of the employees in the stated classes made severally as of the close of each calendar month in the year; except that, when the last day of a month occurs on a Sunday or a holiday, the count should be made as of the last preceding business day. Every count should cover not only employees actually on duty as of the day of the count, but also employees under pay not so on duty if absent from service on sick or other leave or held subject to call for duty.

Each person jointly employed shall, if carried on the pay rolls of the several joint employers, be counted by each employer and represented in its return of number of employees by a fraction based on the number of employers reporting him; if a person, for example, is reportable by three employers, each should include him in its number of employees as one-third of an employee. When the entire compensation of a joint employee is shown on the pay roll of a single joint employer and is paid to the employee by that employer such employee should, for the purpose of returns, be treated as if employed solely by such employer.

Line No.	Class of employees (a)	Number of Employees in Service at Close of Month Named: Jan. (b)	Feb. (c)	Mar. (d)	Apr. (e)	May (f)	June (g)	July (h)	Aug. (i)	Sept. (j)	Oct. (k)	Nov. (l)	Dec. (m)	Average number of employees in service (n)	Total compensation during year (o)
1	Executives, general officers, and assistants														
2	General office clerks														
3	Other general office employees														
4	Field clerks														
5	Field superintendents														
6	Professional and subprofessional employees (engineers, chemists, etc.)														
7	Foremen and assistant foremen														
8	Station engineers and pumpers														
9	Station firemen and oilers														
10	Gagers—Deliverymen and oil receivers														
11	Telegraph operators														
12	Telegraph and telephone line repairmen														
13	Line riders, walkers, or patrolmen														
14	Pipe-line repairmen														
15	Carpenters														
16	Machinists														
17	Electricians														
18	Other mechanics (skilled trades)														
19	Apprentices and helpers (skilled trades)														
20	Truck drivers and teamsters														
21	Laborers, roustabouts, etc.														
22	All other employees														
	Total														

562. COMPENSATION OF OFFICERS, DIRECTORS, ETC.

Give the name, position, salary, and other compensation, such as bonus, commission, gift, reward, or fee of each of its officers, directors, pensioners, or employees to whom the respondent paid $10,000 or more during the year covered by this report as compensation for current or past service over and above necessary expenses incurred in discharge of duties. If more convenient, this schedule may be filled out for a group of companies considered as one system and shown only in the report of the principal company in the system, with references thereto in the reports of the other companies. Any large "other compensation" should be explained in a footnote. If salary of an individual was changed during the year, show salary before each change as well as at close of year. If an officer, director, etc., receives compensation from more than one pipeline company (whether a subsidiary or not) or from a subsidiary company, reference to this fact should be made if his aggregate compensation amounts to $10,000 or more, and detail as to division of the salary should be stated. By salary (column (c)) is meant the annual rate at which an employee is paid, rather than the amount actually paid for a part of a year when the salary is changed. Also, when a 10-percent (or other percent) reduction is made, the net rate, and not the basic rate, should be shown.

Line No.	Name of person (a)	Title (b)	Salary per annum as of close of year (See instructions) (c)	Other compensation during the year (d)
			$	$
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17		TOTAL		

563. PAYMENTS FOR SERVICES NOT RENDERED BY EMPLOYEES

In the form below give information concerning payments, fees, retainers, commissions, gifts, contributions, assessments, bonuses, pensions, subscriptions, allowance for expenses, or any form of payments amounting in the aggregate to $5,000 or more during the year to any corporation, institution, association, firm, partnership, committee, or any person (other than one of respondent's employees covered in schedule 562 in this annual report) for services or as a donation. In the case of contributions of under $5,000 which are made in common with other carriers under a joint arrangement in payment for the performance of services or as a donation, each such contribution shall be reported, irrespectively of the amount thereof, if the total amount paid by all contributors for the performance of the particular service is equal to the sum of $5,000 or more.

To be included are, among others, payments, directly or indirectly, for legal, medical, engineering, advertising, valuation, accounting, statistical, financial, educational, entertainment, charitable, advisory, defensive, detective, developmental, research, appraisal, registration, purchasing, architectural, and hospital services; payments for expert testimony and for handling wage disputes; and payments for services of banks, bankers, trust companies, insurance companies, brokers, trustees, promoters, solicitors, consultants, actuaries, investigators, inspectors, and efficiency engineers. *The enumeration of these kinds of payments should not be understood as excluding other payments for services not excluded below.*

To be excluded are: Rent of buildings or other property; taxes payable to the Federal, State, or local governments; payments for heat, light, power, telegraph, and telephone services; and payments to other carriers on the basis of lawful tariff charges, as well as other payments for services which both as to their nature and amount may reasonably be regarded as ordinarily connected with the routine operation, maintenance, or construction of a pipe line, but any special and unusual payments for services should be reported.

If more convenient, this schedule may be filled out for a group of companies considered as one system and shown only in the report of the principal company in the system, with references thereto in the reports of the other companies.

If any doubt exists in the mind of the reporting officer as to the reportability of any type of payment, request should be made for a ruling before filing this report.

Line No.	Name of recipient (a)	Nature of service (b)	Amount of payment (c)
			$
31			
32			
33			
34			
35			
36			
37			
38			
39			
40			
41			
42			
43			
44			
45			
46			
47			
48		TOTAL	

591. IMPORTANT CHANGES DURING THE YEAR

Hereunder state the following matters, numbering the statements in accordance with the inquiries, and if no changes of the character below indicated have occurred during the year, state that fact:

1. All important physical changes not elsewhere provided for.
2. All important financial changes not elsewhere provided for.
3. All changes in and all additions to franchise rights, describing fully (a) the actual consideration given therefor, and stating (b) the parties from whom acquired; if no consideration was given, state that fact.
4. All additional matters of fact not elsewhere provided for which the respondent may desire to include in its report.

VERIFICATION

The foregoing report must be verified by the oath of the officer having control of the accounting of the respondent. It should be verified, also, by the oath of the president or other chief officer of the respondent, unless the respondent states on the last preceding page of this report that such chief officer has no control over the accounting of the respondent. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

OATH

(To be made by the officer having control of the accounting of the respondent)

State of .....
} ss:
County of .....

..... makes oath and says that he is .....
(Insert here the name of the affiant) (Insert here the official title of the affiant)

of .....
(Insert here the exact legal title or name of the respondent)

that it is his duty to have supervision over the books of account of the respondent and to control the manner in which such books are kept; that he knows that such books have, during the period covered by the foregoing report, been kept in good faith in accordance with the accounting and other orders of the Interstate Commerce Commission, effective during the said period; that he has carefully examined the said report, and to the best of his knowledge and belief the entries contained in the said report have, so far as they relate to matters of account, been accurately taken from the said books of account and are in exact accordance therewith; that he believes that all other statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent during the period of time from and

including ....., 194 , to and including ....., 194

.....
(Signature of affiant)

Subscribed and sworn to before me, a ....., in and for the State and county above named, this ..... day of ....., 194

My commission expires .....

[Use an L. S. impression seal]

.....
(Signature of officer authorized to administer oaths)

SUPPLEMENTAL OATH

(By the president or other chief officer of the respondent)

State of .....
} ss:

MEMORANDA
(FOR USE OF COMMISSION ONLY)

DIRECTIONS GOVERNING ENTRIES ON THIS AND THE FOLLOWING PAGES

Every entry on pages 534 and 535 should be clearly and carefully made with *black ink*. Ditto marks (") or "do." should not be used.

Under "A. Examinations" and "B. Computations," on this page, entries against the correct "No." should be carefully made as indicated.

On page 535, under "Answer needed," use check (✓) if a reply to letter written is requisite; use "No" in other cases. A letter received pertaining to this report, but not in reply to a letter sent, should be recorded under "Answer;" and on the same line, under "Officer addressed," should be inserted the word "None."

In case any letter received merely acknowledges receipt of letter sent, record this acknowledgment on a separate line under "Answer" and insert a second check (✓) in the "Answer needed" column to indicate that there is still lacking a reply to the original letter. When this reply comes to hand record it under "Answer" opposite the entry to which it properly pertains, at the same time crossing out thus (✓✓) the "second check" just mentioned.

Under "Subject," section D page 535, specify briefly the matter corrected.

In making entry of "Name" of "Clerk making examination," page 534, of "Officer addressed," page 535, of "Officer sending letter or telegram," "Officer of Commission," and "Clerk making correction," page 535, *always* enter the surname *first*, writing initials of name last; as, for example, Smith, J. H., Jones, J. K., etc. Make sure that the surname of every officer is *correctly spelled* and that the *proper initials* are given.

Under "Title," page 535, use abbreviations as follows: Pres., V. P., Sec., Treas., Compt., Asst. Compt., Gen. Aud., Aud., Gen. Man., C. E., Gen. Supt., G. P. A., etc.

Under "Month" use the following: Jan., Feb., Mar., Apr., May, June, July, Aug., Sept., Oct., Nov., and Dec. Enter the numerals of the "Year" in full.

EXPLANATORY REMARKS

A. EXAMINATIONS

EXAMINATION OR COMPUTATION				PAGE					SUBJECT EXAMINED	MEMORANDUM OF ERROR					CLERK MAKING EXAMINATION
No.	DATE									PAGE					NAME
	Month	Day	Year												
1															
2															
3															
4															
5															
6															
7															
8															
9															
10															
11															
12															
13															
14															
15															
16															
17															

B. COMPUTATIONS

1															
2															
3															
4															
5															

CARRIED AT FIVE LINES

Report for the Year ended December 31, 1946

C. CORRESPONDENCE

Officer addressed		Date of letter or telegram			Subject	Answer needed	Date of "attention" letter or telegram			Answer						File number of letter or telegram
										Date of—						
										Letter			Acknowledgments			
Name	Title	Month	Day	Year	Page		Month	Day	Year	Month	Day	Year	Month	Day	Year	

D. CORRECTIONS

Date of Correction			Page	Subject	Authority						Clerk Making Correction
					Letter or telegram of—			Officer sending letter or telegram		Officer of commission	
Month	Day	Year			Month	Day	Year	Name	Title	Name	Name

Carriers by Pipe Line

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762 *Respondent's Exhibit "1"*

"The Champlin is a corporation of the State of New Mexico authorized by its charter to produce, buy, sell and transport petroleum, to refine petroleum, and to buy, sell and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile gasoline pipe line system consisting of welded 6-inch pipe extending from Enid, Oklahoma, to Rock Rapids, Iowa. In connection with the pipe line the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and the terminal facilities at Hutchinson and Superior, was completed in June, 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities to Rock Rapids were completed in May, 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid."

* * * * * * * * *

"Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any state commission or regulatory body; the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line."

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Respondent's Exhibit 3A

REFINERIES CENTRAL UNITED STATES
JULY 1948

		Refinery Location	*Products Pipe Line Connection*	*Water Terminals*	*Total Assets 000 Omitted*	*Crude Capacity*
1	Advance Refining Co.	Centralia, Ill.	.....	.....	414	2,500
2	Allied Oil Corp.	St. Elmo, Ill.	.....	Gale, Ill.	x	5,000
3	American Liberty Oil Co.	Texas City, Tex.	.....	.....	18,757	20,000
4	Anderson-Prichard	Cyril, Okla.	.....	.....	23,583	10,000
5	Arrow Petroleum Co.	Centralia, Ill.	.....	.....	x	4,000
6	Altantic Refg. Co.	Port Arthur, Tex.	.....	.....	329,644	27,000
7	Bareco Oil Co.	Wichita, Kans.	.....	.....	5,720	6,500
		Barnsdall, Okla.	Great Lakes	.....		4,500
8	Bay Petroleum Co.	Denver, Colo.	.....	.....	13,590	5,000
		McPherson, Kans.	.....	.....		5,000
9	Bell Oil & Gas Co.	Granfield, Okla.	Own	.....	2,663	4,500
10	Ben Franklin Refg. Co.	Ardmore, Okla.	.....	.....	x	4,500
11	Carter Oil Co. (Standard N. J.)	Billings, Mont.	.....	.....	2,995,990	9,000
		Cut Bank, Mont.	.....	.....		2,000
		New Castle, Wyo.	.....	.....		1,700
		Lovell, Wyo.	.....	.....		3,000
12	Chanute Refining Co.	Chanute, Kans.	.....	.....	226	1,000
13	Cities Service Oil Co.	Ponca City, Okla.	Great Lakes	.....	166,684	11,000
		E. Chicago, Ind.	.....	.....		32,775
14	Continental Oil Co.	Ponca City, Okla.	Great Lakes	.....	209,224	26,000
		Denver, Colo.	.....	.....		3,200
		Wichita Falls, Tex.	.....	.....		5,000
		Glennoak, Wyo.	.....	.....		3,400

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REFINERIES CENTRAL UNITED STATES
JULY 1948

		Refinery Location	*Products Pipe Line Connection*	*Water Terminals*	*Total Assets 000 Omitted*	*Crude Capacity*
15	Coop. Refinery Assn.	Coffeyville, Kans.	Great Lakes	.....	23,413	13,500
		Phillipsburg, Kans.	.....	.....		4,000
		Scottsbluff, Nebr.	.....	.....		1,800
16	Crown Central Petro. Co.	Houston, Texas	.....	.....	13,834	18,000
17	Danciger Refining Co.	Pampa, Texas	.....	.....	x	7,000
		Longview, Tex.	.....	.....		7,000
18	Deep Rock Oil Corp.	Cushing, Okla.	Great Lakes	.....	22,976	12,500
19	Derby Oil Co.	Wichita, Kans.	Own	.....	6,522	8,000
20	Eastern States Pet. Co.	Houston, Tex.	.....	Houston	11,353	30,000
21	El Dorado Refg. Co.	El Dorado, Kans.	Great Lakes	.....	2,826	8,000
22	Empire State Oil Co.	Thermopolis, Wyo.	.....	.....	x	3,000
23	Farmers Union Central Exch.	Laurel, Mont.	.....	.....	12,515	9,000
24	Fen-Ter Refg. Co. (Kerr-McGee)	Wynnewood, Okla.	.....	.....	8,743	5,000
25	Frontier Refg. Co.	Cheyenne, Wyo.	.....	.....	2,702	8,600
26	Globe Oil & Refg. Co.	Lemont, Ill.	.....	Peoria	3,407	27,000
27	Gray Refinery, Inc.	New Castle, Wyo.	.....	.....	x	2,500
28	Gulf Oil Corp.	Ft. Worth, Tex.	.....	.....	929,168	7,800
		Port Arthur, Tex.	.....	Gulf		198,000
		Sweetwater, Tex.	.....	.....		10,000
29	Henry H. Cross Co.	Colmar, Ill.	.....	.....	2,148	1,000
		Smackover, Ark.	.....	.....		6,000
		Dupo, Ill.	.....	.....		1,000
30	Home Oil & Refg. Co.	Great Falls, Mont.	Own	.....	*	2,500

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SUPPLEMENTAL OATH

(By the president or other chief officer of the respondent)

State of .....
} ss:
County of .....

..... makes oath and says that he is .....
(Insert here the name of the affiant) (Insert here the official title of the affiant)

of .....
(Insert here the exact legal title or name of the respondent)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent during the period of time from and including

....., 194 , to and including ....., 194

.....
(Signature of affiant)

Subscribed and sworn to before me, a ....., in and for the State and county above named, this ..... day of ....., 194

My commission expires .....

[Use an L. S. impression seal]

.....
(Signature of officer authorized to administer oaths)

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Page 3—Exhibit 3A

REFINERIES CENTRAL UNITED STATES
JULY 1948

		Refinery Location	Products Pipe Line Connection	Water Terminals	Total Assets 000 Omitted	Crude Capacity
31	Humble Oil & Refining Co.	Baytown, Tex.	Own	Gulf	704,000	190,000
		San Antonio, Tex.	.....	.....		7,000
32	Husky Refining Co.	Cody, Wyo.	.....	.....	17,133	5,000
		Riverton, Wyo.	.....	.....		5,200
33	Johnson Refining Co.	Cleveland, Okla.	Great Lakes	.....	5,632	5,500
34	Kanotex Refining Co.	Ark. City, Kans.	Great Lakes	.....	3,326	8,500
35	Lion Oil Refg. Co.	El Dorado, Ark.	.....	Mississippi	39,348	20,000
36	Magnolia Petro. Co.	Beaumont, Tex.	Own	.....	(See Socony)	125,000
		Ft. Worth, Tex.	Own	.....		12,000
37	Mid-Continent Pet. Co.	Tulsa, Okla.	Great Lakes	.....	115,648	34,000
38	Midland Coop. Wholesale	Cushing, Okla.	Great Lakes	.....	10,011	4,000
39	Missouri Farmers Assn.	Chanute, Kans.	.....	.....	1,476	1,650
40	Natl. Coop. Refg. Assn.	McPherson, Kans.	Own	.....	15,000	18,000
41	Ohio Oil Co.	Robinson, Ill.	Own	.....	163,773	15,000
		Lovell, Wyo.	Own	.....		6,000
42	Pah American Refg. Co. (Pan-Amer. Petro. & Transp. Co.)	Texas City, Tex.	.....	Gulf	167,351	97,000
		Pana, Ill.	.....	.....	x	4,000
43	Ill. Farm Supply Co.	Kans. City, Mo.	Own & Gr. Lakes	.....	439,289	29,000
44	Phillips Petro. Co.	Okmulgee, Okla.	Great Lakes	.....		8,000
		Borger, Texas	Own	.....		44,000
		Sweeney, Texas	.....	.....		18,000
45	Premier Oil Refg. Co.	Ft. Worth, Tex.	.....	.....	3,911	5,500

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Page 4—Exhibit 3A

REFINERIES CENTRAL UNITED STATES
JULY 1948

		Refinery Location	Products Pipe Line Connection	Water Terminals	Total Assets 000 Omitted	Crude Capacity
46	Republic Refg. Co.	Texas City, Tex.	.....	Miss. Gulf	x	26,000
47	Rock Island Refg. Co.	Duncan, Okla.	.....	.....	4,797	7,500
48	Root Petroleum Co.	El Dorado, Ark.	.....	.....	6,199	15,500
49	Shamrock Oil & Gas Co.	McKee, Texas	.....	.....	17,293	4,000
50	Shell Oil Co.	Wood River, Ill.	Own	Miss.-Gr. Lakes	533,912	91,000
		Houston, Tex.	.....	Gulf & Atlantic		85,000
51	Sinclair Refg. Co.	E. Chicago, Ill.	Own	.....	591,280	55,000
		Coffeyville, Kans.	Gr. Lakes	.....		11,000
		Kansas City, Kans.	Gr. Lakes	.....		12,000
		Sand Spgs., Okla.	Gr. Lakes	.....		7,000
		Ft. Worth, Tex.	Own	.....		6,500
		Houston, Tex.	Own	Gulf & Atlantic		73,000
		Corpus Christi, Tex.	Own	Gulf		27,000
52	Skelly Oil Co.	El Dorado, Kans.	Great Lakes	.....	128,998	25,000
		Longview, Tex.	.....	.....		4,500
53	Socony-Vacuum Oil Co.	Augusta, Kans.	Own	.....	1,261,974	23,750
		Casper, Wyo.	.....	.....		4,275
		E. Chicago, Ind.	.....	.....		30,000
		E. St. Louis, Ill.	.....	St. Paul		20,000
54	Standard Oil Co.-Indiana	Wood River, Ill.	.....	Superior, Wisc.	1,268,104	31,000
		Whiting, Ind.	.....	Superior, Wisc.		132,000
		Neodsha, Kans.	.....	.....		7,700
		Sugar Creek, Mo.	Own	.....		26,500
		Casper, Wyo.	.....	.....		13,000
		Greybull, Wyo.	.....	.....		5,500
55	Sunray Oil Co.	Duncan, Okla.	Great Lakes	.....	105,111	20,000
		Allen, Okla.	Great Lakes	.....		13,000

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REFINERIES CENTRAL UNITED STATES
JULY 1948

	Refinery	Refinery Location	Products Pipe Line Connection	Water Terminals	Total Assets 000 Omitted	Crude Capacity
56	Texas Company	Lockport, Ill.	.....	Chicago	1,115.345	50,000
		Lawrenceville, Ill.	.....	.....		27,000
		Tulsa, Okla.	Great Lakes	.....		20,000
		Sunburst, Mont.	.....	.....		7,500
		Amarillo, Tex.	.....	.....		7,500
		Dallas, Tex.	.....	.....		15,000
		El Paso, Tex.	.....	.....		4,000
		Houston, Tex.	.....	.....		27,500
		Port Arthur, Tex.	.....	.....		135,000
		San Antonio, Tex.	.....	.....		7,000
		Casper, Wyo.	.....	.....		12,000
		Craig, Colo.	.....	.....		3,000
57	Tidewater Assoc. Oil Co.	Drumright, Okla.	Great Lakes	.....	262,801	12,000
58	Union Oil Co. of Calif.	Cut Bank, Mont.	.....	.....	271,827	3,500
59	Vickers Petr. Co.	Potwin, Kans.	.....	.....	4,120	5,000
60	Wilcox Oil Co.	Bristow, Okla.	Great Lakes	.....	5,063	6,000
61	Wood River Oil & Refg. Co.	Hartford, Ill.	.....	St. Paul	15,927	20,000
62	Sid Richardson Refg. Co.	Texas City, Tex.	.....	.....	x	20,000
63	Panhandle Prod. & Refg. Co.	Wichita Falls, Tex.	.....	.....	x	4,000
64	Allied Materials Corp.	Stroud, Okla.	.....	.....	x	1,200
65	Comet Refining Co.	New Brighton, Minn.	.....	.....	x	3,000
66	Cosden Petr. Corp.	Big Springs, Tex.	Own-Shell	.....	8,147	18,000
		Graham, Tex.	Own	.....		2,500
67	Mercury Oil Refg. Co.	Okla. City, Okla.	.....	.....	667	2,000
68	Northwest Refg. Co.	St. Paul Park, Minn.	.....	.....	x	5,000
69	Peppers Refining Co.	Okla. City, Okla.	.....	.....	x	1,500

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REFINERIES CENTRAL UNITED STATES
JULY 1948

	Refinery	Refinery Location	Products Pipe Line Connection	Water Terminals	Total Assets 000 Omitted	Crude Capacity
70	Shallow Water Refg. Co.	Shallow Water, Kans.	.....	.....	953	2,500
71	Col-Tex	Colorado City, Tex.	Own	.....	6,308	10,000
72	Pontiac Refg. Co.	Corpus Christi, Tex.	.....	Gulf	x	19,000
73	Pure Oil Co.	Nederland, Tex.	.....	.....	244,540	55,000
74	Southwestern Oil & Refg.	Corpus Christi, Tex.	.....	Gulf	x	17,500
75	Taylor Refg. Co.	Corpus Christi, Tex.	.....	Gulf	x	17,000

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NOTES: * Home Oil & Refining Company, Great Falls, Montana 75% owned by Wasatch Oil Co. Inc. a subsidiary of Phillips Petroleum Co. #44

x Assets not available

SOURCE: Total Assets from Moddy's Industrial Guide or Dun & Bradstreet
Locations and capacities from Information Circular Bureau of Mines I. C. 7455 March 1948

Earned surplus—Appropriated 243
Miscellaneous items in accounts for the year 307
Statement 300
Elections—Voting powers and 104
Employees and their compensation 520
Expense accounts—Operating 303

Funded debt matured unpaid 231
Changes during year 228
Purposes for which issued or assumed during the year 228
Security for unmatured 229
Unmatured (detail of) 226
Funds—Insurance and other 217
Sinking 215

General officers 103
Guaranties and suretyships 105

Identity of respondent 101
Income and surplus—Miscellaneous reservations of 306
Bonds 226
Dividend—and interest income 306
From miscellaneous nonoperating physical property 305
Operating physical property 302
Interest 306
Statement 301
Installments—Capital stock 224
Insurance and other funds 217
Intangibles owned or controlled through nonreporting subsidiaries 213
Interest income—Dividend income and 306

Securities, advances, and other intangibles owned or controlled through nonreporting subsidiaries 213
Investment in, made during the year 208-211
Of affiliated companies 208, 209
Nonaffiliated companies 210, 211
Sold or otherwise disposed of during the year 208-211
Security for unmatured funded debt 229
Services not rendered by employees—Payments for 321
Sinking funds 215
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Stock—Capital 222
Changes during year 223
Installments 224
Issued or assumed during the year—Purposes of 223
Liability for conversion of securities 223
Suretyships—Guaranties and 105
Surplus—Earned—Appropriated 243
Miscellaneous items in accounts for the year 307
Statement 300
Miscellaneous reservations of income and 306
Unearned 243

Taxes—Pipe line 304

Unearned surplus 243
Unmatured funded debt (detail of) 226
Security for 229

Verification 559
Voting powers and elections 104

Respondent's Exhibit 3B

BARGE TERMINALS
NORTHERN PART OF CENTRAL UNITED STATES

	State	*City*	*Company*	*Capacity (Bbls.)*	*River*	*Lake*
1	Illinois	E. St. Louis	Phillips Petroleum Co.	—X—	Miss.	.....
2			Socony-Vacuum Oil Co.	—X—	Miss.	.....
3		Fulton	Fulton Oil Terminal	40,000	Miss.	.....
4		Havana	J. D. Street	45,000	Ill.	.....
5		Kingston Mines	Illinois Farm Supply	230,000	Ill.	.....
6		Peoria	Simpson Oil Co.	85,000	Ill.	.....
7			Socony-Vacuum Oil Co.	75,000	Ill.	.....
8			Standard Oil Co. of Indiana	179,640	Ill.	.....
9			Sweney Gas & Oil Co.	15,300	Ill.	.....
10			Texas Company	45,000	Ill.	.....
11		Peru	Schermerhorn Oil Co.	16,700	Ill.	.....
12			Smith Oil & RefiningCo.	90,000	Ill.	.....
13			Wood River Oil & Refg. Co.	285,000	Ill.	.....
14		Wood River (Hartford)	Shell Oil Company	—X—	Miss.	.....
15			Standard Oil Co. of Indiana	—X—	Miss.	.....
16			Standard Oil Co. of New Jersey	—X—	Miss.	.....
17			Wood River Oil & Refining Co.	587,500	Miss.	.....
18	Iowa	Bettendorf	W. H. Barber Co.	76,120	Miss.	.....
19			Paraland Oil Co.	95,238	Miss.	.....
20			Shell Oil Co.	155,000	Miss.	.....
21			Socony-Vacuum Oil Co.	112,290	Miss.	.....
22			Standard Oil Co. of New Jersey	170,000	Miss.	.....
23	Iowa	Burlington	Strang Eng. Co.	17,143	Miss.	.....
24		Fort Madison	Everingham Warehouse	95,238	Miss.	.....
25	Kansas	Kansas City	Phillips Petroleum Co.	880,000	Mo.	.....
26			Socony-Vacuum Oil Co.	340,000	Mo.	.....
27	Minnesota	Minneapolis	Penn-O-Tex Oil Co.	121,000	Miss.	.....
28			Pure Oil Company	138,095	Miss.	.....
29			Western Oil & Fuel Co.	114,286	Miss.	.....
30		St. Paul	Clark's Super Gas Co.	28,571	Miss.	.....
31			Northwestern Refining Co.	77,405	Miss.	.....

BARGE TERMINALS
NORTHERN PART OF CENTRAL UNITED STATES

	State	*City*	*Company*	*Capacity (Bbls.)*	*River*	*Lake*
32	Minnesota	St. Paul	Shell Oil Company	830,500	Miss.	.....
33			Socony-Vasuum Oil Co.	317,500	Miss.	.....
34			Wood River Oil & Refg. Co.	260,000	Miss.	.....
35		Winona	Shell Oil Co.	30,000	Miss.	.....
36			Standard of New Jersey	26,400	Miss.	.....
37			Western Oil & Fuel Co.	50,000	Miss.	.....
38	Missouri	Canton	Ayers Oil Co.	7,120	Miss.	.....
39			Clark Super Gas Co.	40,000	Miss.	.....
40	Wisconsin	La-Crosse	Socony-Vacuum Oil Co.	138,095	Miss.	.....
41		Superior	Cities Service Oil Co.	—X—		Superior
42			Pure Oil Co.	—X—		Superior
43			Standard Oil Co. of Indiana	—X—		Superior

NOTE: "X" Capacity Not Available

SOURCE: "Petroleum Barging" by Butcher—Arthur Inc. Houston, Texas
"Oil Price Hand Book" for 1945—National Petroleum News

770 *Respondent's Exhibit 10*

CHAMPLIN REFINING COMPANY

FIRST 6 MONTHS 1946

PRODUCTS PIPE LINE OPERATION

HOURS EACH DAY ENID TO HUTCHINSON

Date and Hours Operated	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*
1	0	24	0	24	24	24
2	23	24	8	24	24	24
3	24	24	15	24	24	20
4	24	24	24	24	24	24
5	24	24	24	24	19	24
6	24	24	14	24	24	24
7	24	24	0	24	24	24
8	24	24	6	24	24	12
9	4	24	24	24	24	24
10	0	24	15	24	24	24
11	0	24	18	24	24	24
12	16	24	21	24	24	24
13	24	24	15	24	24	24
14	24	24	13	24	24	24
15	22	24	7	24	24	24
16	22	24	24	24	24	24
17	24	24	19	24	24	24
18	24	24	24	24	24	24
19	24	0	24	24	24	24
20	24	0	24	24	24	24
21	24	0	24	24	21	24
22	24	0	24	24	24	24
23	24	0	24	24	24	24
24	24	18	12	24	24	24
25	24	24	19	24	24	14
26	24	1	24	24	24	14
27	24	0	4	24	24	24
28	24	0	14	24	24	8
29	24	x	24	24	24	13
30	24	x	21	24	18	24
31	24	x	24	x	24	x
Total Hours	639	475	533	720	730	657
Daily Average	20.6	17.0	17.2	24.0	23.5	21.9

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CHAMPLIN REFINING COMPANY

Last 6 Months 1946

Products Pipe Line Operation

Hours Each Day Enid to Hutchinson

Date and Hours Operated	*Jul*	*Aug*	*Sept*	*Oct*	*Nov*	*Dec*
1	24	24	24	24	24	0
2	24	24	24	24	0	24
3	24	24	24	24	0	24
4	0	24	24	24	24	24
5	0	24	24	24	24	24
6	24	24	21	24	24	24
7	24	24	24	24	24	24
8	24	24	24	24	14	0
9	24	24	24	24	0	24
10	19	24	24	24	0	24
11	24	24	24	24	24	24
12	24	24	24	24	24	24
13	24	24	24	24	24	24
14	24	24	24	24	24	24
15	24	24	24	24	24	24
16	24	24	24	24	0	24
17	24	24	24	24	0	24
18	24	24	24	24	24	24
19	24	24	24	0	13	24
20	24	24	24	0	6	24
21	24	24	24	24	24	24
22	24	24	24	24	4	24
23	24	24	24	24	0	24
24	24	24	24	24	0	24
25	24	24	24	24	19	0
26	24	24	24	0	24	24
27	24	24	24	0	20	24
28	24	24	24	24	0	24
29	24	24	24	24	24	24
30	24	24	24	24	0	24
31	24	24	x	23	x	24
Total Hours	691	744	717	647	412	672
Daily Average	22.3	24	23.3	20.9	13.7	21.7

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Exhibit 10

CHAMPLIN REFINING COMPANY

First 6 Months 1947

Products Pipe Line Operation

Hours Each Day Enid to Hutchinson

Date and Hours Operated	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*
1	0	24	24	24	24	24
2	24	24	24	24	24	24
3	24	24	24	24	24	2
4	24	24	24	24	24	19
5	3	24	24	24	24	24
6	19	24	24	24	24	24
7	24	24	24	24	2	24
8	24	24	24	24	2	24
9	24	24	24	21	24	24
10	24	24	24	0	24	24
11	24	24	24	19	24	24
12	24	24	24	24	24	24
13	24	24	24	24	24	24
14	24	24	24	24	24	24
15	24	24	24	24	24	24
16	24	24	24	24	24	24
17	24	24	24	24	24	24
18	24	24	24	24	24	24
19	24	0	24	24	24	24
20	24	24	24	24	24	24
21	24	24	24	24	24	24
22	24	24	24	24	24	24
23	24	24	24	24	24	24
24	24	24	24	24	24	24
25	24	24	24	24	24	24
26	24	24	24	24	24	24
27	24	24	24	24	24	24
28	24	24	24	24	24	24
29	24	x	24	24	24	24
30	24	x	24	24	24	23
31	24	x	24	x	24	x
Total Hours	693	648	744	688	744	692
Daily Average	22.4	23.1	24	22.9	24	23.1

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CHAMPLIN REFINING COMPANY

Last 6 Months 1947

Products Pipe Line Operation

Hours Each Day Enid to Hutchinson

Date and Hours Operated	*Jul*	*Aug*	*Sept*	*Oct*	*Nov*	*Dec*
1	24	0	24	19	24	24
2	24	0	24	24	24	24
3	24	0	24	24	24	24
4	0	20	24	24	24	24
5	22	0	24	24	24	24
6	24	0	24	24	24	24
7	23	18	24	24	24	24
8	24	22	24	24	24	24
9	12	24	24	22	24	24
10	0	24	24	24	24	23
11	12	24	24	23	24	24
12	24	24	24	24	22	24
13	24	24	24	24	24	24
14	22	24	24	24	24	24
15	0	24	24	24	24	24
16	22	24	24	24	24	24
17	17	24	24	24	24	24
18	0	24	24	24	24	24
19	0	24	24	24	24	24
20	19	24	24	24	3	24
21	24	24	24	24	0	24
22	24	24	24	1	0	24
23	18	24	24	0	0	24
24	0	24	21	0	22	16
25	0	24	24	7	24	8
26	20	24	24	21	24	24
27	14	23	24	24	24	24
28	20	24	24	24	24	24
29	2	22	24	24	24	24
30	0	23	24	24	24	24
31	0	24	x	24	x	24
Total Hours	439	608	717	645	623	719
Daily Average	14.2	19.6	23.9	20.8	20.8	23.2

CHAMPLIN REFINING COMPANY

First 6 Months 1948

Products Pipe Line Operation

Hours Each Day Enid to Hutchinson

Date and Hours Operated	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*
1	0	24	24	24	24	24
2	24	24	24	24	24	24
3	24	24	24	24	24	24
4	24	24	24	24	24	24
5	24	24	24	24	24	24
6	24	24	24	24	24	24
7	14	24	24	24	24	24
8	24	24	24	24	24	24
9	24	24	24	24	24	7
10	24	23	24	24	24	14
11	24	24	19	24	24	24
12	24	24	21	24	24	8
13	24	24	24	24	24	0
14	24	18	24	24	24	21
15	24	23	24	24	24	24
16	24	24	24	24	24	24
17	24	24	24	24	24	7
18	24	24	24	24	24	22
19	24	24	24	24	24	10
20	24	24	24	24	24	24
21	24	24	24	24	24	8
22	24	24	24	24	24	24
23	24	24	24	24	24	7
24	24	24	24	24	24	24
25	24	24	24	24	24	9
26	24	24	24	24	24	24
27	24	24	24	24	23	9
28	24	24	24	24	24	18
29	24	24	24	24	24	24
30	24	x	24	24	24	24
31	24	x	24	x	24	x
Total Hours	710	688	736	720	743	548
Daily Average	22.9	23.7	22.9	24	23.9	18.3

775 *Respondent's Exhibit 11*

CHAMPLIN REFINING COMPANY

FIRST 6 MONTHS 1946

PRODUCTS PIPE LINE OPERATION

HOURS EACH DAY HUTCHINSON TO SUPERIOR

Date and Hours Operated	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*
1	0	0	9	24	24	24
2	23	0	2	24	22	24
3	24	0	0	24	19	20
4	24	0	12	24	24	24
5	22	0	19	24	24	24
6	24	24	7	5	24	24
7	24	21	0	7	24	24
8	24	24	6	18	24	24
9	20	24	17	24	0	24
10	21	24	4	24	0	24
11	20	22	18	24	24	24
12	24	24	24	24	24	24
13	11	24	22	20	24	22
14	24	24	2	24	24	24
15	6	24	6	24	24	24
16	22	24	12	24	24	24
17	24	24	21	24	24	24
18	24	24	12	24	0	24
19	24	0	24	24	0	24
20	24	0	22	24	24	24
21	24	0	24	24	17	24
22	24	0	24	24	24	24
23	7	0	24	24	24	24
24	7	0	4	24	24	22
25	24	0	19	24	24	6
26	24	0	24	12	24	14
27	24	12	4	19	24	24
28	16	24	14	24	24	6
29	0	x	7	24	24	13
30	0	x	21	24	18	14
31	0	x	24	x	24	x
Total Hours	559	343	428	657	628	645
Daily Average	18	12.3	13.8	21.9	19.5	21.5

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CHAMPLIN REFINING COMPANY

Last 6 Months 1946

Products Pipe Line Operation

Hours Each Day Hutchinson to Superior

Date and Hours Operated	Jul	Aug	Sept	Oct	Nov	Dec
1	24	24	24	24	24	0
2	16	24	24	24	24	24
3	18	0	21	24	24	24
4	0	24	24	24	14	24
5	24	24	24	24	22	24
6	24	24	21	24	24	17
7	24	24	24	24	24	24
8	14	24	24	12	15	0
9	24	24	24	24	0	12
10	24	24	24	24	0	24
11	24	24	24	24	24	24
12	24	24	23	24	24	24
13	24	24	24	12	24	24
14	24	21	24	24	23	24
15	24	24	24	24	24	12
16	24	24	24	24	0	24
17	24	24	24	24	0	24
18	24	24	24	24	24	0
19	24	8	24	24	13	24
20	24	18	24	24	6	22
21	24	24	24	24	24	24
22	12	24	24	24	4	24
23	24	24	24	24	0	16
24	24	24	24	24	0	24
25	24	24	[illegible]	24	19	0
26	24	24	24	24	24	24
27	24	20	24	0	20	24
28	21	24	24	24	0	24
29	11	24	24	24	24	24
30	24	24	24	24	0	24
31	24	24	x	23	x	24
Total Hours	668	691	713	695	448	607
Daily Average	21.5	22.3	23.8	22.4	14.9	19.6

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CHAMPLIN REFINING COMPANY

First 6 Months 1947

Products Pipe Line Operation

Hours Each Day Hutchinson to Superior

Date and Hours Operated	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*
1	0	0	24	24	24	24
2	23	18	24	24	24	24
3	24	24	24	24	24	2
4	19	24	24	24	24	19
5	3	24	24	24	24	24
6	0	24	24	24	24	24
7	12	24	24	24	24	24
8	24	12	24	0	0	24
9	16	24	24	9	24	24
10	24	24	24	0	24	24
11	17	24	24	19	24	24
12	24	24	24	24	24	24
13	24	24	21	24	24	12
14	20	24	24	24	24	0
15	24	24	24	24	24	12
16	24	24	24	24	12	22
17	20	4	24	24	0	22
18	24	19	24	24	24	24
19	24	0	5	24	24	24
20	24	24	0	24	24	24
21	24	24	0	24	24	24
22	24	24	0	24	24	24
23	24	24	12	24	24	24
24	23	24	24	12	24	24
25	15	24	24	24	24	24
26	24	24	24	24	24	24
27	24	24	24	24	24	23
28	24	20	24	24	24	24
29	24	x	24	24	24	24
30	5	x	24	24	24	24
31	0	x	18	x	24	x
Total Hours	581	577	632	640	684	640
Daily Average	18.7	20.6	20.4	21.3	22.1	21.3

CHAMPLIN REFINING COMPANY

Last 6 Months of 1947

Products Pipe Line Operation

Hours Each Day Hutchinson to Superior

Date and Hours Operated	Jul	Aug	Sep	Oct	Nov	Dec
1	24	0	24	19	24	24
2	24	0	24	24	24	24
3	24	0	24	24	24	24
4	0	20	24	24	24	22
5	22	0	24	24	24	18
6	24	0	24	24	24	24
7	23	18	22	24	24	24
8	24	22	24	24	24	24
9	12	24	24	22	24	20
10	0	24	24	24	24	23
11	12	24	24	23	24	24
12	24	24	24	24	24	20
13	22	24	24	24	24	21
14	22	24	24	24	24	20
15	0	24	24	24	24	21
16	22	24	24	24	24	20
17	17	24	24	24	24	21
18	0	24	24	24	24	21
19	0	24	24	24	24	24
20	19	24	24	24	3	24
21	24	24	24	24	0	24
22	24	24	24	1	0	24
23	18	24	24	0	0	24
24	0	24	21	0	0	16
25	0	24	24	7	13	8
26	20	24	24	21	24	24
27	14	23	24	24	24	24
28	20	24	24	24	24	24
29	2	22	24	24	14	24
30	0	23	24	24	24	20
31	0	24	x	24	x	20
Total Hours	437	608	715	645	582	675
Daily Average	14.1	19.6	23.8	20.8	19.4	21.8

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Exhibit 11

CHAMPLIN REFINING COMPANY

First 6 Months 1948

Products Pipe Line Operation

Hours Each Day Hutchinson to Superior

Date and Hours Operated	Jan	Feb	Mar	Apr	May	Jun
1	0	24	23	0	23	0
2	24	24	24	24	0	23
3	24	24	24	24	14	24
4	24	18	24	24	24	24
5	24	0	17	24	24	24
6	24	1	17	24	24	23
7	14	24	24	24	24	24
8	24	24	24	24	24	24
9	24	24	24	24	24	24
10	12	23	24	24	24	24
11	24	24	19	22	24	24
12	24	9	21	24	24	8
13	24	24	0	24	20	0
14	24	18	24	24	24	21
15	24	23	24	24	24	24
16	0	24	24	11	24	24
17	24	24	24	12	24	7
18	24	24	24	0	24	22
19	24	24	24	24	24	10
20	24	24	24	24	24	24
21	24	24	24	24	0	8
22	15	24	24	24	24	24
23	24	24	24	24	0	7
24	24	24	24	24	24	24
25	24	24	23	24	24	9
26	24	14	24	24	24	17
27	24	24	24	24	24	0
28	24	24	24	14	24	18
29	24	24	24	24	24	24
30	24	x	21	24	5	24
31	24	x	0	x	0	x
Total Hours	665	610	669	635	614	533
Daily Average	21.5	21	22.3	21.2	20.5	17.8

780 *Respondent's Exhibit 12*

CHAMPLIN REFINING COMPANY

PRODUCTS PIPE LINE OPERATION—IN BARRELS

LAST 6 MONTHS 1947

	Hutchinson, Kansas	Superior, Nebraska	Rock Rapids, Iowa	Totals
(1) Barrels of all products *delivered*, at Enid Refinery, *into pipe line* last six months 1947				
Gasoline	x x x	x x x	x x x	713,933
Kerosene	x x x	x x x	x x x	234,624
Tractor Fuel	x x x	x x x	x x x	40,278
Total				988,835
(2) Barrels of all products *delivered* by pipe line, last six months 1947, *to terminals*				
Gasoline	23,455	204,287	472,155	699,897
Kerosene	x x x	84,866	156,038	240,904
Tractor Fuel	x x x	40,758	x x x	40,758
Total Deliveries to Terminals	23,455	329,911	628,193	981,559
(3) Deliveries from Terminals were:				
A. By Rail:				
Iowa Destination	x x x	x x x	8,131	8,131
Minnesota Destinations	x x x	x x x	52,627	52,627
Nebraska Destinations	x x x	3,859	x x x	3,859
N. Dakota Destinations	x x x	x x x	1,490	1,490
S. Dakota Destinations	x x x	x x x	36,891	36,891
Total Rail Deliveries	x x x	3,859	99,139	102,998
B. By Truck:				
Colorado Destinations	1,153	x x x	x x x	1,153
Iowa Destinations	x x x	34,765	173,327	208,092
Kansas Destinations	21,095	869	x x x	21,964
Minn. Destinations	x x x	89	191,547	191,636
Nebraska Destinations	x x x	294,865	x x x	294,865
N. Dakota Destinations	x x x	x x x	3,422	3,422
S. Dakota Destinations	x x x	1,794	126,281	128,075
Wisc. Destinations	x x x	x x x	9,263	9,263
Total Truck Deliveries	22,248	332,382	503,840	858,470
Total Deliveries from Terminals	22,248	336,241	602,979	961,468

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CHAMPLIN REFINING COMPANY

SUMMARY OF ALL PRODUCTS DELIVERED INTO STATES SERVED BY PRODUCTS PIPE LINE

LAST 6 MONTHS OF 1947

	Gasoline	Tractor	Kerosene**	Total Barrels	Daily Average
Total Deliveries from Terminals in Barrels (see Schedule headed "Products Pipe Line Operation")				961,468	5,225
ADD: Rail Shipments, from Enid, of products normally delivered from pipe line terminals*:					
Iowa	2,243,851	27,121	937,039		
Minnesota	1,251,116	117,611	472,060		
Nebraska	1,729,886	321,370	454,244		
N. Dakota	50,591	7,894	—0—		
S. Dakota	615,420	80,314	124,509		
Total Gals.	5,890,864	554,310	1,987,852		
Barrels	140,259	13,198	47,330	200,787	1,091
Totals				1,162,255	6,316

* NOTE: Under normal conditions there would be no rail shipments and all of the shipments above listed would have been available at our pipe line terminals. However, during this period the demand was so acute that stocks were on a hand-to-mouth basis and pipe line shipments to our terminals were delayed until products could be accumulated in the necessary quantities. The jobbers could not wait on this delay (which would not be present under normal circumstances) and so requested immediate delivery at Enid.

** Includes Furnace Oil.

782 *Respondent's Exhibit 13*

HUTCHINSON KANSAS TERMINAL

JOBBERS PRICE LIST #1

EFFECTIVE MAY 10, 1948 7:00 A. M.

Subject to change without notice F. O. B. Hutchinson, Kansas Terminal:

* 73-75 Octane Presto "Q"	.11000
* 60-62 400 end Straight Run "Navy"	.10375
* Ethyl	.12
42-44 550 end Kerosene	.10000
#1 Straw Furnace Oil	.09625

* Federal Tax to be added

The above prices subject to the allowance to meet competitive pricing as shown on attached list.

CHAMPLIN REFINING COMPANY
Enid, Oklahoma

E. W. SMITH
Sales Manager

783 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM HUTCHINSON, KANSAS TERMINAL TO POINTS IN KANSAS

No. 1

EFFECTIVE MAY 10, 1948

Town		*Town*	
Anthony	.00125	Leoti	.00125
Belleville	.00125	Lewis	.00125
Belpre	.00125	Meade	.00125
Burrton	.00125	Montezuma	.00125
Charleston	.00125	Moscow	.00125
Cimarron	.00125	Ness City	.00125
Clearwater	.00125	Newton	.00125
Coldwater	.00125	Ottawa	.00125
Concordia	.00125	Palco	.00125
Deerfield	.00125	Pratt	.00125
Dodge City	.00125	Pretty Prairie	.00125
Eldorado	.00125	Sabetha	.00125
Ellinwood	.00125	Salina	.00125
Emporia	.00125	Satana	.00125
Englewood	.00125	Scott City	.00125
Garden City	.00125	St. John	.00125
Garnett	.00125	Stockton	.00125
Geneseo	.00125	Sylvia	.00125
Goodland	.00125	Syracuse	.00125
Great Bend	.00125	Topeka	.00125
Greensburg	.00125	Tribune	.00125
Haviland	.00125	Webber	.00125
Hays	.00125	Wichita	.00375
Hazelton	.00125	Wilmore	.00125
Herington	.00125	Winchester	.00125
Holton	.00125	Wright	.00125
Horton	.00125	Zook	.00125
Hutchinson	None		
Isabel	.00125		
Jetmore	.00125		
Johnson	.00125		
Kingman	.00125		
Kinsley	.00125		
La Crosse	.00125		
Larned	.00125		

784 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM HUTCHINSON, KANSAS TERMINAL TO POINTS IN COLORADO

No. 1

EFFECTIVE MAY 10, 1948

Town	
Eads	.00375
La Junta	.00375
Las Animas	.00375
Lamar	.00375
Ordway	.00375
Pritchett	.00375
Pueblo	.00375
Rocky Ford	.00375
Springfield	.00375

785 *Respondent's Exhibit 14*

SUPERIOR, NEBRASKA TERMINAL

JOBBERS PRICE LIST #1

EFFECTIVE MAY 10, 1948 7:00 A. M.

Subject to change without notice F. O. B. Superior, Nebraska Terminal:

* 73-75 Octane Presto "Q"	.12250
* 60-62 400 end Straight Run "Navy"	.11625
* Ethyl Gasoline	.1325
42-44 550 end Kerosene	.11250
#1 Straw Furnace Oil	.10875
* Tractor Fuel	.1150

* Federal Tax to be added.

The above prices subject to the allowance to meet competitive pricing as shown on attached list.

CHAMPLIN REFINING COMPANY
Enid, Oklahoma

E. W. SMITH
Sales Manager

786 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM SUPERIOR, NEBRASKA TERMINAL TO POINTS IN NEBRASKA

No. 1

EFFECTIVE MAY 10, 1948

Town		*Town*	
Adams	.00625	Harvard	.00375
Ainsworth	.01000	Hastings	.00375
Albion	.00625	Hays Center	.00625
Alliance	.01000	Hendley	.00500
Alma	.00500	Holdrege	.00500
Anoka	.01125	Holstein	.00500
Anselma	.00500	Homer	.01125
Ansley	.00500	Humphrey	.00625
Atkinson	.00750	Hyannis	.01000
Auburn	.01125	Inland	.00375
Aurora	.00375	Julian	.01125
Bancroft	.01125	Juniata	.00375
Bassett	.01000	Kearney	.00625
Beatrice	.00625	Lawrence	.00125
Beaver City	.00500	Lexington	.00625
Benedict	.00500	Lincoln	.00500
Benkelman	.00625	Loomis	.00500
Bertrand	.00500	Mason City	.00500
Big Springs	.01000	Maywood	.00500
Bradshaw	.00375	Mead	.00875
Broken Bow	.00500	Minden	.00500
Butte	.01125	Moorefield	.00500
Central City	.00500	Morse Bluff	.00750
Chambers	.00625	Mullen	.01000
Chappell	.01000	Nebraska City	.01125
Chester	.00500	Nelson	.00125
Columbus	.00625	Norfolk	.00750
Cozad	.00625	North Loup	.00500
Crofton	.01000	North Platte	.00625
Culbertson	.00625	Odell	.00500
Curtis	.00500	Ogallala	.01000
David City	.00625	Omaha	.01125
Elwood	.00500	O'Neill	.00750
Emerson	.01125	Ord	.00500
Eustis	.00500	Overton	.00625
Fairmont	.00375	Orafino	.00500
Farnam	.00500	Palisade	.00625
Franklin	.00500	Palmer	.00500
Fremont	.00875	Paxton	.01000
Glenvil	.00375	Pender	.01125
Gothenburg	.00625	Phillips	.00375
Grand Island	.00500	Potter	.01125

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CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM SUPERIOR, NEBRASKA TERMINAL TO POINTS IN NEBRASKA

No. 1

EFFECTIVE MAY 10, 1948

Town cont.	
Raymond	.00500
St. Paul	.00500
Scottsbluff	.01000
Shelton	.00500
Shickley	.00500
Sidney	.01125
Silver Creek	.00500
Smithville	.00500
Spencer	.01125
Springview	.01000
Stapleton	.00625
Stockville	.00500
Stuart	.00750
Superior	None
Surprise	.00500
Sutherland	.01000
Talmage	.01125
Trenton	.00625
Valentine	.01000
Venango	.00875
Wakefield	.00875
Wauneta	.00625
Wayne	.00750
West Point	.00750
Wood River	.00500

788 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM SUPERIOR, NEBRASKA TERMINAL TO POINTS IN KANSAS

No. 1

EFFECTIVE MAY 10, 1948

Town	
Webber	.01125

789 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING
FROM SUPERIOR, NEBRASKA TERMINAL TO POINTS IN SO. DAKOTA
No. 1
EFFECTIVE MAY 10, 1948

Town	
Gregory	.01125
Kimball	.01125
Mitchell	.01125
Winner	.01125
Yankton	.01125

790 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING
FROM SUPERIOR, NEBRASKA TERMINAL TO POINTS IN IOWA
No. 1
EFFECTIVE MAY 10, 1948

Town	
Akron	.01125
Avoca	.01125
Blockton	.01125
Crescent	.01125
Minden	.01125
New Market	.01125
Tabor	.01125

791 *Respondent's Exhibit 15*

CHAMPLIN IOWA TERMINAL
JOBBERS PRICE LIST #1
EFFECTIVE MAY 10, 1948 7:00 A. M.

Subject to change without notice F.O.B. Champlin Iowa Terminal:

* 73-75 Octane Presto "Q"	.12125
* 60-62 400 end Straight Run "Navy"	.1150
* Ethyl Gasoline	.13125
42-44 550 end Kerosene	.11125
#1 Straw Furnace Oil	.1075

* Federal Tax to be added

The above prices subject to the allowance to meet competitive pricing as shown on attached list.

CHAMPLIN REFINING COMPANY
Enid, Oklahoma

E. W. SMITH
Sales Manager

792 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM CHAMPLIN IOWA TERMINAL TO POINTS IN IOWA

No. 1

EFFECTIVE MAY 10, 1948

Town		*Town*	
Ackley	.00250	Mapleton	None
Akron	None	Marcus	None
Albert City	None	Marshalltown	.00375
Algona	.00125	Mason City	.00250
Alton	None	Maurice	None
Ames	.00250	Merrill	None
Aredale	.00250	Milford	None
Armstrong	None	Minden	.00250
Aurelia	None	Nashua	.00375
Avoca	.00250	Newell	None
Bancroft	.00125	New Market	.00375
Bedford	.00375	Ocheyedan	None
Bode	.00125	Orange City	None
Boone	.00250	Oskaloosa	.00500
Boxholm	.00250	Paullina	None
Boyden	None	Perry	.00250
Britt	.00250	Peterson	None
Cedar Rapids	.00500	Plymouth	.00250
Churdan	.00250	Pocahontas	.00125
Coin	.00375	Radcliffe	.00250
Crescent	.00250	Readlyn	.00375
Dickens	None	Rembrandt	None
Edna	None	Ringsted	None
Estherville	None	Rock Rapids	None
Everly	None	Rock Valley	None
Fredericksburg	.00375	Rudd	.00250
Galt	.00250	St. Ansgar	.00250
Gaza	None	Sac City	.00125
George	None	Sheldon	None
Gravity	.00375	Sibley	None
Griswold	.00250	Sioux Center	None
Hampton	.00250	Spencer	None
Hartley	None	Spirit Lake	None
Hull	None	Storm Lake	None
Ionia	.00375	Sumner	.00500
Janesville	.00375	Sutherland	None
Kanawha	.00250	Swaledale	.00250
Kensett	.00250	Swea City	.00125
Lake Mills	.00250	Valley Jct.	.00250
Lake View	.00125	Waterloo	.00375
Le Mars	None	West Bend	.00125
Lytton	.00125	What Cheer	.00500
Malvern	.00250		

793 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM CHAMPLIN IOWA TERMINAL TO POINTS IN MINNESOTA

No. 1

EFFECTIVE MAY 10, 1948

Town		*Town*	
Adrian	None	Parkers Prairie	.00125
Albert Lea	None	Park Rapids	.00250
Alexandria	.00125	Pelican Rapids	.00125
Austin	.00125	Pennock	None
Badger	.00250	Pipestone	None
Browns Valley	None	Pünsburg	None
Cedar Mills	None	Redwood Falls	None
Clements	None	Renville	None
Clinton	None	Roosevelt	.00250
Edgerton	None	Roseau	.00250
Elbow Lake	.00125	Slayton	None
Elrose	.00125	Springfield	None
Frazee	.00250	West Union	.00125
Gary	.00250	Wilmont	None
Good Thunder	None	Windom	None
Granite Falls	None	Worthington	None
Greenbush	.00250		
Halma	.00250		
Heron Lake	None		
Hills	None		
Hutchinson	None		
Iona Lake	None		
Lake Lillian	None		
Leota	None		
Litchfield	None		
Luverne	None		
Madison	None		
Mankato	None		
Marshall	None		
Montevideo	None		
Moorhead	.00250		
Morgan	None		
Olivia	None		
Minneapolis	.00125		

794 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM CHAMPLIN IOWA TERMINAL TO POINTS IN NORTH DAKOTA

No. 1

EFFECTIVE MAY 10, 1948

Town	
Adams	.00250
Adrian	.00250
Aneta	.00250
Berlin	.00250
Berwick	.00250
Christine	.00250
Cooperstown	.00250
Dahlen	.00250
Dickey	.00250
Fargo	.00250
Langdon	.00250
Larimore	.00250
Lidgerwood	.00125
Maddock	.00250
Mayville	.00250
Milnor	.00250
Munich	.00250
Steele	.00250
Verona	.00250

795 CHAMPLIN REFINING COMPANY

ALLOWANCE TO MEET COMPETITIVE PRICING

FROM CHAMPLIN IOWA TERMINAL TO POINTS IN SOUTH DAKOTA

No. 1

EFFECTIVE MAY 10, 1948

Town		*Town*	
Aberdeen	.00125	Montrose	None
Agar	.00125	New Effington	.00125 ~~.01125~~
Arlington	None	Newell	.00250
Armour	None	Parker	None
Beresford	None	Parkston	None
Blunt	.00125	Pierre	.00125
Bowdle	.00250	Platte	None
Bristol	None	Presho	.00125
Butler	None	Raymond	None
Canton	None	Rosholt	.00125
Carthage	None	Scotland	None
Chancellor	None	Sioux Falls	None
Clark	None	Sisseton	.00125
Colman	None	Stickney	None
De Smet	None	Summit	None
Dimock	None	Viberg	None
Emery	None	Wagner	None
Estelline	None	Wakonda	None
Flandreau	None	Watertown	None
Frederick	.00125	Waubay	None
Garretson	None	Webster	None
Gettysburg	.00125	Wessington	None
Gregory	.00125	Wessington Springs.	None
Hartford	None	White Lake	None
Herreid	.00250	Winner	.00125
Howard	None	Woonsocket	None
Hurley	None	Worthing	None
Huron	None	Yale	None
Ipswich	.00125	Yankton	None
Kimball	None		
La Bolt	None		
Lebanon	.00125		
Lennox	None		
Madison	None		
Marion Jct.	None		
Mitchell	None		
Mobridge	.00250		

796 CHAMPLIN REFINING COMPANY
ALLOWANCE TO MEET COMPETITIVE PRICING
FROM CHAMPLIN IOWA TERMINAL TO POINTS IN WISCONSIN
No. 1
EFFECTIVE MAY 10, 1948

Town	
Menomonie	.00375

798 *Respondent's Exhibit 17*

SALES CONTRACT

THIS CONTRACT made and entered into this 10th day of May, 1948, at Enid, Oklahoma, by and between the CHAMPLIN REFINING COMPANY, a New Mexico corporation, as Seller and HENSLEY OIL COMPANY of BURRTON, KANSAS, as Buyer.

The Seller agrees to sell to Buyer, and Buyer agrees to purchase from the Seller on the terms and conditions hereinafter set forth the following described petroleum products.

	Minimum Gallons	*Minimum Gallons*
All Grades of Champlin Gasoline	200,000	250,000
Champlin 42-44 Kerosene and No. 1 Straw Furnace Oil	50,000	62,500
Champlin Lubricating Oils	4,000	5,000
Champlin Greases	1,700	2,100

provided, however, that the quantity of kerosene and furnace oil which Seller is obligated to sell to Buyer shall not exceed, in the aggregate, 25% of Buyer's actual purchases of gasoline.

TERMS:

As approved by the Credit Department. Payment to be in lawful money of the United States at the office of the Seller.

PRICE:

The price of Lubricating Oils and Greases shall be Champlin Spot price, F. O. B. Enid, Oklahoma.

The price of the following commodities shall be Champlin Hutchinson Terminal prices F. O. B. Hutchinson, Kansas which prices are as follows as of date hereof:

Champlin Presto Gasoline 73-75 Octane	.11000
Champlin Ethyl Gasoline	.12
Champlin U. S. Motor 60 Octane and Below	.10375
Champlni 42-44 Kerosene	.10000
Champlin No. 1 Straw Furnace Oil	.09625
_____	_____
_____	_____
_____	_____

less allowance to meet competitive prices as follows:
On commodities for destination to Burrton, Kansas,
.00125 ¢ per gallon
On commodities for destination to _____,
_____ ¢ per gallon
On commodities for destination to _____,
_____ ¢ per gallon
On commodities for destination to _____,
_____ ¢ per gallon

The Champlin Hutchinson Terminal price of each commodity above described will advance or decline the same amount as the average price of each said commodity (or a similar commodity if no quotation is published for the same product) advances or declines as published in the Chicago Journal of Commerce effective day after date of publication, except that the price of Champlin U. S. Motor 60 Octane and below will change the same as the High price of said commodity as published in the Chicago Journal of Commerce. For the purpose of this paragraph, the changes in the Chicago Journal of Commerce average prices for 73-75 Octane gasoline shall govern the price changes in Champlin Ethyl gasolnie; the changes in the average Chicago Journal of Commerce prices for No. 1 White Fuel Oil will govern the changes in the prices of Champlin No. 1 Straw Furnace Oil. An increase or decrease of less than ⅛¢ in any Chicago Journal of Commerce average price will not affect the Champlin Hutchinson Terminal price.

If, during the life of this contract, price quotations
799 of any of the above commodities be discontinued by the Chicago Journal of Commerce, the Seller shall fix the advance and decline of said prices until a publication or market reporter acceptable to both Buyer and Seller can be selected.

All prices are subject to the addition of any taxes or charges imposed by the State or Federal Government, on any of the products bought and sold hereunder.

In the event of the depreciation of the currency of the United States by inflation, reduction of the gold content of the dollar, issuance of fiat money or expansion of credit, or if Seller's costs are increased by increased costs of labor, or of raw material or otherwise, any prices quoted herein may, with the consent of all parties hereto, be increased proportionately forthwith, provided that if such consent is not obtained the Seller shall have the option in any of the events recited in this paragraph, to immediately cancel any obligation herein contained, without liability to Buyer.

Buyer agrees to place orders for the goods covered hereby in fairly even monthly quantities with due regard to seasonal requirements. Should Buyer default in this condition, Seller may suspend all sales hereunder until Buyer has complied with the agreement contained in this paragraph, and Seller shall not be required, in such event, to deliver at any future time the quantity of commodities not ordered by Buyer in the month in which Buyer was entitled to the same.

Neither party shall be obligated to perform any commitment during any period in which such performance is made impossible by strikes, fires, the elements, governmental authority, partial or total interruption of transportation, inability to obtain crude oil, essential supplies or tank cars, or because of picketing, labor disputes, war conditions in this or any other country, riots, granting of or failure to receive priorities or allocations, or any cause or causes whatever beyond its control, it being expressly agreed that such causes are not limited to those listed above; nor shall Seller be held responsible for losses resulting from delays in filling orders or failure to make delivery by reason of any such cause.

This agreement shall not be assigned or transferred by either party directly or indirectly without the written consent of the other.

This agreement shall be in force for a period commencing the 10th day of May, 1948, and ending the 9th day of May, 1949.

This contract shall not be binding upon the Champlin Refining Company until signed in behalf of said Company by its Vice-President and when so executed, shall be deemed to contain all the terms of agreement between the parties, and no understandings or agreements thereto, or al-

terations thereof, or additions thereto, shall be recognized by, or be binding upon the Champlin Refining Company unless reduced to writing and executed in the same manner.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 10th day of May, 1948.

Approved this 13 day of
May, 1948.

CHAMPLIN REFINING COMPANY

By: E. W. SMITH
Vice-President

CHAMPLIN REFINING COMPANY

By: C. W. LEWIS
Representative of Seller

HENSLEY OIL CO.
Buyer

By: GILBERT HENSLEY

ATTEST:

.....
Secretary

800 CHAMPLIN REFINING COMPANY

Copy

Enid, Oklahoma

Date Jun 2 48 Terms 1-10
Your order

Refer to conditions of sale on the reverse side of original invoice

CHAMPLIN
HI-V-I
Motor Oil
on the Ground or in the Sky

Interest at 8 per cent if not paid when due. Taxes and transportation charges always net cash.

For Customer's Use
AUDITED
Jun 3 1948
By M

Invoice No. 65734—HUTCH
Salesman 52

Sold to HENSLEY OIL CO
Burrton Kans

Consigned to Same
Routing Own 18

Car or Ticket Number	Products	Drums—Bbls.	Gross Gallons	Temp. °F	Net Gallons	Price	Amount
187179. 6	73-75 Oct Presto	7186	1644	72	1632	10875	17748
	Fed Tax					01329027	2448
	Insp Fee					01321849	33
							20229

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

1632

CHAMPLIN REFINING COMPANY Nº 24813 F
ENID, OKLAHOMA

Date 6-2-48

Ship to Hemby Oil Co. Destination Bristol, Ms

Invoice to [illegible] Address [illegible]

OTC LFCL LFCP MVF PD POB

Terms 1-10 Salesman 52

AMOUNT	UNIT		UNIT	PRICE
		CHAMPLIN		
1649	[illegible]	73-75 [illegible] C		[illegible]

ORDER

Add: Federal Tax _____ State Tax _____ Inspection _____ Sales Tax _____ P. L. Differential _____

Original Freight _____

Form [illegible]

553

PAGE 8

158

802

PIPELINE TERMINAL

LOADING TICKET

CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

Place loaded Hutchinson, Kansas Time 8:15 A. M.

Date 6-2-48 Order No. 24813

Invoice to Hensley Oil Co.
Address Burrton, Kansas

Delivered to Same
(Be sure to show destination)
R. R. or Truck Company Own
Address Same
Car No. or Truck No. 1346 Tag No. .....

State Kansas LFCP No. 258

From Tank	Number	Product	Bbl. Case Drum—Tire Size	Temp.	Gallons or Pounds	
2077	AU	73-75 Presto		72	1644	1632

Seal Nos. or Memo 44171-74 Inc.

Loader SMITH

RECEIVED the property described above in good order except as noted, marked, consigned and destined as indicated above. The undersigned carrier hereby certifies that he is duly authorized by the consignee to receive the above described merchandise as agent of the said consignee. It is agreed that delivery of the said merchandise to the Carrier shall constitute delivery to the consignee. It is further agreed that this may be used as a bill of lading in lieu of the standard form prescribed by the Interstate Commerce Commission or by any controlling state law and is acceptable to consignor and carrier.

Name of Truck Co. HENSLEY OIL CO.
By G. HENSLEY.

ORIGINAL

FORWARD THIS COPY
TO GENERAL OFFICE

65374
No. 187179

803 *Respondent's Exhibit 18*

SALES CONTRACT

THIS CONTRACT made and entered into this 10th day of May, 1948, at Enid, Oklahoma, by and between the CHAMPLIN REFINING COMPANY, a New Mexico corporation, as Seller and SEGER OIL COMPANY of ONEILL, NEBRASKA, as Buyer.

The Seller agrees to sell to Buyer, and Buyer agrees to purchase from the Seller on the terms and conditions hereinafter set forth the following described petroleum products.

	Minimum Gallons	*Maximum Gallons*
All Grades of Champlin Gasoline....	560,000	700,000
Champlin 42-44 Kerosene and No. 1 Straw Furnace Oil.....	140,000	175,000
Champlin Lubricating Oils.....	11,200	14,000
Champlin Greases.....	4,700	5,800
Champlin Nebraska Tractor Fuel....	120,000	150,000

provided, however, that the quantity of kerosene and furnace oil which Seller is obligated to sell to Buyer shall not exceed, in the aggregate, 25% of Buyer's actual purchases of gasoline.

TERMS:

As approved by the Credit Department. Payment to be in lawful money of the United States at the office of the Seller.

PRICE:

The price of Lubricating Oils and Greases shall be Champlin Spot price, F. O. B. Enid, Oklahoma.

The price of the following commodities shall be Champlin Superior Terminal prices F.O.B. Superior, Nebraska which prices are as follows as of date hereof:

Champlin Presto Gasoline 73-75 Octane	.1225
Champlin Ethyl Gasoline	.1325
Champlin U. S. Motor 60 Octane and Below	.11625
Champlin 42-44 Kerosene	.1125

Champlin No. 1 Straw Furnace Oil	.10875
Champlin Nebraska Tractor Fuel	.115

less allowances to meet competitive prices as follows:

On commodities for destination to Oneill, Nebraska, .0075 ¢ per gallon

On commodities for destination to Ainsworth, Nebraska, .01 ¢ per gallon

On commodities for destination to Valentine, Nebraska, .01 ¢ per gallon

On Commodities for destination to Spencer, Nebraska, .01125¢ per gallon

The Champlin Superior Terminal price of each commodity above described will advance or decline the same amount as the average price of each said commodity (or a similar commodity if no quotation is published for the same product) advances or declines as published in the Chicago Journal of Commerce effective day after date of publication, except that the price of Champlin U. S. Motor 60 Octane and below will change the same as the High price of said commodity as published in the Chicago Journal of Commerce. For the purpose of this paragraph, the changes in the Chicago Journal of Commerce average prices for 73-75 Octane gasoline shall govern the price changes in Champlin Ethyl gasoline; the changes in the average Chicago Journal of Commerce prices for No. 1 White Fuel Oil will govern the changes in the prices of Champlin No. 1 Straw Furnace Oil; the changes in the average Chicago Journal of Commerce prices for U. S. Motor 60 Octane gasoline shall govern the price changes in Champlin Nebraska Tractor Fuel. An increase or decrease of less than ⅛¢ in any Chicago Journal of Commerce average price will not affect the Champlin Superior Terminal price.

If, during the life of this contract, price quotations
804 of any of the above commodities be discontinued by the Chicago Journal of Commerce, the Seller shall fix the advance and decline of said prices until a publication or market reporter acceptable to both Buyer and Seller can be selected.

All prices are subject to the addition of any taxes or charges imposed by the State or Federal Government, on any of the products bought and sold hereunder.

In the event of the depreciation of the currency of the United States by inflation, reduction of the gold content of the dollar, issuance of fiat money or expansion of credit, or if Seller's costs are increased by increased costs of labor, or of raw material or otherwise, any prices quoted herein may, with the consent of all parties hereto, be increased proportionately forthwith, provided that if such consent is not obtained the Seller shall have the option in any of the events recited in this paragraph, to immediately cancel any obligation herein contained, without liability to Buyer.

Buyer agrees to place orders for the goods covered hereby in fairly even monthly quantities with due regard to seasonal requirements. Should Buyer default in this condition, Seller may suspend all sales hereunder until Buyer has complied with the agreement contained in this paragraph, and Seller shall not be required, in such event, to deliver at any future time the quantity of commodities not ordered by Buyer in the month in which Buyer was entitled to the same.

Neither party shall be obligated to perform any commitment during any period in which such performance is made impossible by strikes, fires, the elements, governmental authority, partial or total interruption of transportation, inability to obtain crude oil, essential supplies or tank cars, or because of picketing, labor disputes, war conditions in this or any other country, riots, granting of or failure to receive priorities or allocations, or any cause or causes whatever beyond its control, it being expressly agreed that such causes are not limited to those listed above; nor shall Seller be held responsible for losses resulting from delays in filling orders or failure to make delivery by reason of any such cause.

This agreement shall not be assigned or transferred by either party directly or indirectly without the written consent of the other.

This agreement shall be in force for a period commencing the 10th day of May, 1948, and ending the 9th day of May, 1949.

This contract shall not be binding upon the Champlin Refining Company until signed in behalf of said Company by its Vice-President and when so executed, shall be deemed to contain all the terms of agreement between the parties, and no understandings or agreements thereto, or alterations thereof, or additions thereto, shall be recognized by, or be binding upon the Champlin Refining Company unless reduced to writing and executed in the same manner.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 10th day of May, 1948.

CHAMPLIN REFINING COMPANY

By PAUL CRAWFORD
Representative of Seller

SEGER OIL CO.
Buyer

By: D. E. SEGER

Attest:

.....
Secretary

Approved this 15th day of May, 1948.

CHAMPLIN REFINING COMPANY
By: E. W. SMITH
Vice-President

805 CHAMPLIN REFINING COMPANY
Enid, Oklahoma

Copy (Seal)
Refer to conditions of sale on the reverse side of original invoice

3

Invoice No. 65936-SUPR
Salesman 20
Sold to SEGER OIL CO. Oneill Nebraska
Consigned to Same 32
Routing Own

Date Jun 3 48 Terms 1-10
Your Order

Interest at 8 per cent if not paid when due. Taxes and transportation charges always net cash.

For Customer's Use
AUDITED
Jun 4 1948
By M

Car or Ticket Number	Products	Drums—Bbls.	Gross Gallons	Temp. °F.	Net Gallons	Price	Amount
90240	73 75 Oct Presto	7186	4140	70	4115	115	47323
	Fed Tax				01329022		6173
							53496

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

806 CHAMPLIN REFINING COMPANY
Enid, Oklahoma

65936 No. 11240 C
Date 6-3-48

Ship to ..... Destination .....
Invoice to SEGER OIL Co. Address Oneill, Neb.
OTC ... LFCL ... LFCP 4 MVF ... PD ... FOB ...
Terms 1-10 Own Salesman 20

Amount	*Unit*		*Unit Price*
		Champlin	
	4115		
4140	73-75	Presto	11 500
			Order

Add: Federal Tax Yes State Tax .... Inspection ....
Sales Tax .... P. L. Differential ....
ORIGINAL Freight .....
Form C36

807 THE RAY PETROLEUM CORPORATION
McPherson, Kansas

65936

TRUCK LOADING ORDER

Bay Truck Dock Date 6/3 1948
Transporter Seger
Consignee Same
Destination O'Neill, Nebr.
Load truck L. F. C. L. No. .....
as follows:

Comp't	*Product*
1, 2 & 3	Bronze 1715, 690, 1735
	White
	Ethyl
	Kerosene

O. ECKLAND
Driver

.....
Billing Clerk

Loaded by .....
Form No. 243

808 PIPELINE TERMINAL

LOADING TICKET

CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

65936
Place loaded Superior Truck Rack Time 5:00 p. m.
Date 6-3-48 Order No. 11240
Invoice to SEGER OIL Co.
Address Oneill Nebr
Delivered to same

(Be sure to show destination)

R. R. or Truck Company own
Address same
Car No. or Truck No. . . Tag No. . . State Nebr LFCL No. 4

From Tank	Number	Product	Bbl. Case Drum—Tire Size	Temp.	Gallons or Pounds	
2084		73-75 Oct Presto		70	4140	
						41469
						41408
						61

Seal Nos. or Memo 37417— 20 Incl

Loader SCHWASS

RECEIVED the property described above in good order except as noted, marked, consigned and destined as indicated above. The undersigned carrier hereby certifies that he is duly authorized by the consignee to receive the above described merchandise as agent of the said consignee. It is agreed that delivery of the said merchandise to the Carrier shall constitute delivery to the consignee. It is further agreed that this may be used as a bill of lading in lieu of the standard form prescribed by the Interstate Commerce Commission or by any controlling state law and is acceptable to consignor and carrier.

State Tax .....
No. 90240

Name of Truck Co. SEGER OIL Co.
By O. E. ELKLAND

ORIGINAL

Forward this copy
to General Office

PL39—20M—11-46

809 *Respondent's Exhibit 19*

SALES CONTRACT

THIS CONTRACT made and entered into this 10th day of May, 1948, at Enid, Oklahoma, by and between the CHAMPLIN REFINING COMPANY, a New Mexico corporation as Seller and GREGORY INDEPENDENT OIL COMPANY of GREGORY, SOUTH DAKOTA, as Buyer.

The Seller agrees to sell to Buyer, and Buyer agrees to purchase from the Seller on the terms and conditions hereinafter set forth the following described petroleum products.

	Minimum Gallons	Maximum Gallons
All Grades of Champlin Gasoline	480,000	600,000
Champlin 42-44 Kerosene and No. 1 Straw Furnace Oil.....	120,000	150,000
Champlin Lubricating Oils.....	9,600	12,000
Champlin Greases	4,000	5,000
.....	.....	.....
.....	.....	.....
.....	.....	.....

provided, however, that the quantity of kerosene and furnace oil which Seller is obligated to sell to Buyer shall not exceed, in the aggregate, 25% of Buyer's actual purchases of gasoline.

TERMS:

As approved by the Credit Department. Payment to be in lawful money of the United States at the office of the Seller.

PRICE:

The price of Lubricating Oils and Greases shall be Champlin Spot price, F. O. B. Enid, Oklahoma.

The price of the following commodities shall be Champlin Iowa Terminal prices F. O. B. Champlin, Iowa, which prices are as follows as of date hereof:

Champlin Presto Gasoline 73-75 Octane....	.12125
Champlin Ethyl Gasoline.....	.13125
Champlin U. S. Motor 60 Octane and Below.	.1150
Champlin 42-44 Kerosene.....	.11125
Champlin No. 1 Straw Furnace Oil.....	.1075
.....	.....
.....	.....
.....	.....

less allowance to meet competitive prices as follows:

On commodities for destination to Gregory, So. Dakota, .00125¢ per gallon

On commodities for destination to
....., ...¢ per gallon
On commodities for destination to
....., ...¢ per gallon
On commodities for destination to
....., ...¢ per gallon

The Champlin Iowa Terminal price of each commodity above described will advance or decline the same amount as the average price of each said commodity (or a similar commodity if no quotation is published for the same product) advances or declines as published in the Chicago Journal of Commerce effective day after date of publication, except that the price of Champlin U. S. Motor 60 Octane and below will change the same as the High price of said commodity as published in the Chicago Journal of Commerce. For the purpose of this paragraph, the changes in the Chicago Journal of Commerce average prices for 73-75 Octane gasoline shall govern the price changes in Champlin Ethyl gasoline; the changes in the average Chicago Journal of Commerce prices for No. 1 White Fuel Oil will govern the changes in the prices of Champlin No. 1 Straw Furnace Oil. An increase or decrease of less than 1/8¢ in any Chicago Journal of Commerce average price will not affect the Champlin Iowa Terminal price.

If, during the life of this contract, price quotations
810 of any of the above commodities be discontinued by the Chicago Journal of Commerce, the Seller shall fix the advance and decline of said prices until a publication or market reporter acceptable to both Buyer and Seller can be selected.

All prices are subject to the addition of any taxes or charges imposed by the State or Federal Government, or any of the products bought and sold hereunder.

In the event of the depreciation of the currency of the United States by inflation, reduction of the gold content of the dollar, issuance of fiat money or expansion of credit, or if Seller's costs are increased by increased costs of labor, or of raw material or otherwise, any prices quoted herein may, with the consent of all parties hereto, be increased proportionately forthwith, provided that if such consent is not obtained the Seller shall have the option in any of the events recited in this paragraph, to immediately cancel any obligation herein contained, without liability to Buyer.

Buyer agrees to place orders for the goods covered hereby in fairly even monthly quantities with due regard to seasonal requirements. Should Buyer default in this condition, Seller may suspend all sales hereunder until Buyer

has complied with the agreement contained in this paragraph, and Seller shall not be required, in such event, to deliver at any future time the quantity of commodities not ordered by Buyer in the month in which Buyer was entitled to the same.

Neither party shall be obligated to perform any commitment during any period in which such performance is made impossible by strikes, fires, the elements, governmental authority, partial or total interruption of transportation, inability to obtain crude oil, essential supplies or tank cars, or because of picketing, labor disputes, war conditions in this or any other country, riots, granting of or failure to receive priorities or allocations, or any cause or causes whatever beyond its control, it being expressly agreed that such causes are not limited to those listed above; nor shall Seller be held responsible for losses resulting from delays in filling orders or failure to make delivery by reason of any such cause.

This agreement shall not be assigned or transferred by either party directly or indirectly without the written consent of the other.

This agreement shall be in force for a period commencing the 10th day of May, 1948, and ending the 9th day of May, 1949.

This contract shall not be binding upon the Champlin Refining Company until signed in behalf of said Company by its Vice-President and when so executed, shall be deemed to contain all the terms of agreement between the parties, and no understandings or agreements thereto, or alterations thereof, or additions thereto, shall be recognized by, or be binding upon the Champlin Refining Company unless reduced to writing and executed in the same manner.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 10th day of May, 1948.

CHAMPLIN REFINING COMPANY
By: ALLAN H. ROHDE
Representative of Seller

Approved this 15 day of
May, 1948.

CHAMPLIN REFINING COMPANY
BY: E. W. SMITH
Vice-President

GREGORY IND. OIL CO.
Buyer
BY: G. G. SCHOLL

ATTEST:
.....
Secretary

811 COPY

CHAMPLIN REFINING COMPANY
ENID, OKLAHOMA

REFER TO CONDITIONS OF SALE ON THE REVERSE SIDE OF ORIGINAL INVOICE

INVOICE NO. 65776 ROCK RAPIDS JUN 2 48 TERMS CASH
SALESMAN 80 YOUR ORDER

INTEREST AT 8 PER CENT IF NOT PAID WHEN DUE. TAXES AND TRANSPORTATION CHARGES ALWAYS NET CASH.

SOLD TO GREGORY INDEP OIL CO
GREGORY SO DAKOTA

(FOR CUSTOMER'S USE)
(A U D I T E D)
(JUN 3 1948)
(By M)

CONSIGNED TO SAME
ROUTING OWN 47

Car or Ticket Number	Products	Drums—Bbls.	Gross Gallons	Temp. °F	Net Gallons	Price	Amount
6 116687	73 75 Presto Gaso	7186	3965	56	3975	12	47700
	Fed Tax				01329027		5963
							53663

This company and its subsidiaries have complied with the applicable provisions of the Federal Fair Labor Standards Act of 1938, in the production of the goods covered by this invoice.

812 65776

GREGORY INDEPENDENT OIL CO.
Gas – Oil – Greases
Dial 5171
Gregory, South Dakota

6-1-48

Champlin Oil & Ref. Co.
Please load
full load Presto gaso 3965 gal
full bbl H1V1 No—40
~~10~~ cans ⅕ gal H1V1—30
12

G G SCHOLL

65776 **CHAMPLIN REFINING COMPANY** No. 49731 C

[illegible], OKLAHOMA

Date 6-2-48

Sold to Gregory Indy Ark Co Destination Gregory Co Dist

Invoice to [illegible] Address [illegible]

OTC LFCL LFCP MVF/2922 PD FOB

Terms [illegible] Salesman [illegible]

AMOUNT	UNIT	27 Jul 48	UNIT	PRICE
		CHAMPLIN		
3965	39[illegible]	[illegible]	2	[illegible]

ORDER

Add: Federal Tax _____ State Tax _____ Inspection _____ Sales Tax _____ P. L. Differential _____

ORIGINAL Freight _____

Form [illegible]

565

PAGE C

PIPELINE TERMINAL
LOADING TICKET
CHAMPLIN REFINING COMPANY, ENID, OKLAHOMA

[illegible] TIME 8 AM. DATE 6-2-48 ORDER NO. 49731

[illegible] Gregory Inder Oil Co

[illegible] Gregory So Dak.

[illegible] SAME

[illegible] Owl

[illegible] SAME

[illegible] I TAG NO. 27T448 STATE So Dak. P.D. NO. [illegible] 2922

[illegible]	[illegible]	PRODUCT	BBL. CASE DRUM—TIRE SIZE	TEMP.	GALLONS OR POUNDS			
5/4		Presto 93 75 cct ASTM		56	3965			
7.	33							

SEAL NOS. OR MEMO. [illegible] 5505 [illegible] 2 [illegible]

LOADER [illegible]

[illegible]

STATE TAX

NAME OF TRUCK CO. [illegible]

BY [illegible]

ORIGINAL
FORWARD THIS COPY TO GENERAL OFFICE

Nº 116687

FL30—[illegible]—11-46

566

864

pp. 534, 536
also blank

815 *Respondent's Exhibit 20.*

HUTCHINSON TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				–Freight Rates*–	
Kansas	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Anthony	.00 250	.00 250	—0—	100%	—0—	—0—
Belleville	.00 250	.00 250	—0—	100%	.00 330	132%
Belpre	.00 250	.00 250	—0—	100%	.00 132	53%
Burrton	.00 250	.00 250	—0—	100%	.00 396	158%
Charleston	.00 250	.00 250	—0—	100%	.00 396	158%
Cimarron	.00 250	.00 250	—0—	100%	.00 396	158%
Clearwater	.00 250	.00 250	—0—	100%	.00 066	26%
Coldwater	.00 250	.00 250	—0—	100%	—0—	—0—
Concordia	.00 250	.00 250	—0—	100%	.00 330	132%
Deerfield	.00 250	.00 250	—0—	100%	.00 462	185%
Dodge City	.00 250	.00 250	—0—	100%	.00 396	158%
Eldorado	.00 250	.00 250	—0—	100%	.00 066	26%
Ellinwood	.00 250	.00 250	—0—	100%	.00 132	53%
Emporia	.00 250	.00 250	—0—	100%	No R R	—0—
Englewood	.00 250	.00 250	—0—	100%	—0—	—0—
Garden City	.00 250	.00 250	—0—	100%	.00 396	158%
Garnett	.00 250	.00 250	—0—	100%	.00 264	106%
Geneseo	.00 250	.00 250	—0—	100%	.00 198	79%
Goodland	.00 250	.00 250	—0—	100%	.00 924	370%
Great Bend	.00 250	.00 250	—0—	100%	.00 198	79%
Greensburg	.00 250	.00 250	—0—	100%	.00 066	26%
Haviland	.00 250	.00 250	—0—	100%	.00 132	53%
Hays	.00 250	.00 250	—0—	100%	.00 396	158%
Hazelton	.00 250	.00 250	—0—	100%	—0—	—0—
Herrington	.00 250	.00 250	—0—	100%	.00 132	53%
Holton	.00 250	.00 250	—0—	100%	.00 462	185%
Horton	.00 250	.00 250	—0—	100%	.00 660	264%
Hutchinson	.00 375	.00 375	—0—	100%	.01 122	299%
Isabel	.00 250	.00 250	—0—	100%	—0—	—0—
Jetmore	.00 250	.00 250	—0—	100%	.00 396	158%
Johnson	.00 250	.00 250	—0—	100%	.00 660	264%
Kingman	.00 250	.00 250	—0—	100%	No R R	—0—
Kinsley	.00 250	.00 250	—0—	100%	.00 066	26%
La Crosse	.00 250	.00 250	—0—	100%	.00 528	211%
Larned	.00 250	.00 250	—0—	100%	.00 132	53%
Leoti	.00 250	.00 250	—0—	100%	.00 660	264%

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

816 Exhibit 20

HUTCHINSON TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				–Freight Rates*–	
Kansas Cont'd	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Lewis	.00 250	.00 250	—0—	100%	No R R	—0—
Meade	.00 250	.00 250	—0—	100%	.00 396	158%
Montezuma	.00 250	.00 250	—0—	100%	.00 462	185%
Moscow	.00 250	.00 250	—0—	100%	.00 660	264%
Ness City	.00 250	.00 250	—0—	100%	.00 594	238%
Newton	.00 250	.00 250	—0—	100%	.00 266	26%
Ottawa	.00 250	.00 250	—0—	100%	.00 264	106%
Paico	.00 250	.00 250	—0—	100%	.00 462	185%
Pratt	.00 250	.00 250	—0—	100%	No R R	—0—
Pretty Prairie	.00 250	.00 250	—0—	100%	.00 132	53%
Sabetha	.00 250	.00 250	—0—	100%	.00 660	264%
Salina	.00 250	.00 250	—0—	100%	.00 198	49%
Satana	.00 250	.00 250	—0—	100%	.00 462	185%
Scott City	.00 250	.00 250	—0—	100%	.00 726	290%
St. John	.00 250	.00 250	—0—	100%	.00 132	53%
Stockton	.00 250	.00 250	—0—	100%	.00 462	185%
Sylvia	.00 250	.00 250	—0—	100%	.00 330	132%
Syracuse	.00 250	.00 250	—0—	100%	.01 056	422%
Topeka	.00 250	.00 250	—0—	100%	.00 396	158%
Tribune	.00 250	.00 250	—0—	100%	.00 924	370%
Webber	.00 250	.00 250	—0—	100%	.00 528	211%
Wichita	.00 250	.00 250	—0—	100%	—0—	—0—
Wilmore	.00 250	.00 250	—0—	100%	—0—	—0—
Winchester	.00 250	.00 250	—0—	100%	No R R	—0—
Wright	.00 250	.00 250	—0—	100%	.00 396	158%
Zook	.00 250	.00 250	—0—	100%	No R R	—0—

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

SUPERIOR TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				–Freight Rates*–	
Nebraska	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Adams	.00 891	.00 891	—0—	100%	.01 782	200%
Ainsworth	.00 594	.00 594	—0—	100%	.02 244	378%
Albion	.01 000	.01 000	—0—	100%	.02 442	244%
Alliance	.00 594	.00 594	—0—	100%	.02 310	389%
Alma	.01 125	.01 125	—0—	100%	.02 640	216%
Anoka	.00 462	.00 462	—0—	100%	.02 046	444%
Anselma	.01 136	.01 136	—0—	100%	.02 904	256%
Ansley	.01 100	.01 100	—0—	100%	.02 838	258%
Atkinson	.00 924	.00 924	—0—	100%	.02 640	286%
Auburn	.00 500	.00 726	.00 226	69%	.01 782	356%
Aurora	.01 200	.01 200	—0—	100%	.02 376	198%
Bancroft	.00 528	.00 528	—0—	100%	.01 320	250%
Bassett	.00 594	.00 594	—0—	100%	.02 112	356%
Beatrice	.01 000	.01 000	—0—	100%	.02 112	211%
Beaver City	.01 125	.01 125	—0—	100%	.02 904	258%
Benedict	.01 125	.01 125	—0—	100%	.02 442	217%
Benkelman	.01 000	.01 000	—0—	100%	.03 168	317%
Bertrand	.01 125	.01 125	—0—	100%	.02 640	235%
Big Springs	.00 594	.00 594	—0—	100%	.02 574	433%
Bradshaw	.01 250	.01 250	—0—	100%	.02 442	195%
Broken Bow	.01 100	.01 100	—0—	100%	.02 970	270%
Butte	.00 462	.00 462	—0—	100%	No R R	—0—
Central City	.01 125	.01 125	—0—	100%	.02 376	211%
Chambers	.00 990	.00 990	—0—	100%	No R R	—0—
Chappell	.00 594	.00 594	—0—	100%	.02 046	344%
Chester	.01 064	.01 064	—0—	100%	.02 244	211%
Columbus	.01 004	.01 004	—0—	100%	.02 244	224%
Cozad	.01 000	.01 000	—0—	100%	.02 310	231%
Crofton	.00 660	.00 660	—0—	100%	.01 584	240%
Culbertson	.01 000	.01 000	—0—	100%	.02 904	290%
Curtts	.01 250	.01 250	—0—	100%	.02 904	232%
David City	.01 004	.01 004	—0—	100%	.02 178	217%
Elwood	.01 250	.01 250	—0—	100%	.02 838	227%
Emerson	.00 462	.00 462	—0—	100%	.01 188	257%
Eustis	.01 250	.01 250	—0—	100%	.02 644	212%
Fairmont	.01 250	.01 250	—0—	100%	.02 409	193%

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

SUPERIOR TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				–Freight Rates*–	
Nebraska Cont'd	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Farnam	.01 250	.01 250	—0—	100%	.02 640	211%
Franklin	.01 125	.01 125	—0—	100%	.02 673	238%
Fremont	.00 792	.00 792	—0—	100%	.01 716	217%
Genoa	.01 004	.01 004	—0—	100%	.02 376	237%
Glenvil	.01 225	.01 225	—0—	100%	.02 475	202%
Gothenburg	.01 000	.01 000	—0—	100%	.02 244	224%
Grand Island	.01 125	.01 125	—0—	100%	.02 376	211%
Harvard	.01 225	.01 225	—0—	100%	.02 376	194%
Hastings	.01 225	.01 225	—0—	100%	.02 475	202%
Hays Center	.01 000	—0—	—0—	—0—	No R R	—0—
Hendley	.01 125	.01 125	—0—	100%	.02 706	241%
Holdrege	.01 150	.01 150	—0—	100%	.02 508	218%
Holstein	.01 150	.01 150	—0—	100%	.02 607	227%
Homer	.00 528	.00 528	—0—	100%	.01 320	250%
Humphrey	.00 990	.00 990	—0—	100%	.02 046	207%
Hyannis	.00 594	.00 594	—0—	100%	.02 838	478%
Inland	.01 225	.01 225	—0—	100%	.02 409	197%
Juniata	.01 225	.01 225	—0—	100%	.02 409	197%
Kearney	.01 000	.01 000	—0—	100%	.02 508	251%
Lawrence	.01 500	.01 500	—0—	100%	.02 574	172%
Lexington	.01 000	.01 000	—0—	100%	.02 508	251%
Lincoln	.01 122	.01 122	—0—	100%	.01 848	165%
Loomis	.01 125	.01 125	—0—	100%	.02 640	235%
Mason	.01 100	.01 100	—0—	100%	.02 640	240%
Maywood	.01 250	.01 250	—0—	100%	.02 640	211%
Mead	.00 726	.00 726	—0—	100%	.01 716	236%
Minden	.01 125	.01 125	—0—	100%	.02 508	223%
Moorefield	.01 452	.01 452	—0—	100%	.02 574	177%
Morse Bluff	.00 900	.00 900	—0—	100%	.01 980	220%
Mullen	.00 660	.00 660	—0—	100%	.02 772	420%
Nebraska City	.00 500	.00 500	—0—	100%	.01 518	304%
Nelson	.01 500	.01 500	—0—	100%	.02 409	161%
Norfolk	.00 924	.00 924	—0—	100%	.01 848	200%
North Loup	.01 100	.01 100	—0—	100%	.02 442	222%
North Platte	.01 000	.01 000	—0—	100%	.02 376	238%
Odell	.01 099	.01 099	—0—	100%	.01 980	180%

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

SUPERIOR TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				—Freight Rates*—	
Nebraska Cont'd	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Ogallala	.00 594	.00 594	—0—	100%	.02 508	422%
Omaha	.00 500	.00 500	—0—	100%	.01 584	317%
O'Neill	.00 924	.00 924	—0—	100%	.01 848	200%
Ord	.01 100	.01 100	—0—	100%	.02 574	234%
Overton	.01 150	.01 150	—0—	100%	.02 376	207%
Orafino	.01 250	.01 250	—0—	100%	No R R	—0—
Palisade	.01 000	.01 000	—0—	100%	.02 904	290%
Paxton	.00 594	.00 594	—0—	100%	.02 442	411%
Pender	.00 528	.00 528	—0—	100%	.01 188	225%
Phillips	.01 200	.01 200	—0—	100%	.02 376	198%
Raymond	.01 000	.00 122	.00 122	89%	.01 914	191%
St. Paul	.01 100	.01 100	—0—	100%	.02 640	240%
Scottsbluff	.00 594	.00 594	—0—	100%	.01 650	278%
Shelton	.01 150	.01 150	—0—	100%	.02 508	218%
Shickley	.01 000	.01 000	—0—	100%	.02 508	251%
Sidney	.00 500	.00 500	—0—	100%	.01 122	224%
Silver Creek	.01 070	.01 070	—0—	100%	.02 310	216%
Spencer	.00 528	.00 528	—0—	100%	.01 914	363%
Springview	.00 594	—0—	—0—	—0—	No R R	—0—
Stapleton	.01 000	.01 000	—0—	100%	.02 442	244%
Stockville	.01 250	.01 250	—0—	100%	No R R	—0—
Stuart	.00 924	.00 924	—0—	100%	.02 310	250%
Sutherland	.00 594	.00 594	—0—	100%	.02 310	389%
Superior	.01 625	.01 625	—0—	100%	.02 706	167%
Surprise	.01 125	.01 125	—0—	100%	No R R	—0—
Talmage	.00 500	.00 500	—0—	100%	.01 650	330%
Trenton	.01 000	.01 000	—0—	100%	.02 970	397%
Valentine	.00 594	.00 594	—0—	100%	.01 452	244%
Venango	.00 750	.00 750	—0—	100%	.02 640	352%
Wakefield	.00 726	.00 726	—0—	100%	.01 584	218%
Wauneta	.01 000	.01 000	—0—	100%	.02 838	284%
Wayne	.00 858	.00 858	—0—	100%	.01 716	200%
West Point	.00 924	.00 924	—0—	100%	.01 980	214%
Wood River	.01 125	.01 125	—0—	100%	.02 508	223%

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

ROCK RAPIDS (CHAMPLIN) TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				–Freight Rates*–	
Iowa	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Ackley	.01 000	.01 056	.00 056	95%	.01 584	158%
Ackron	.01 250	.01 749	.00 499	71%	.02 574	206%
Albert City	.01 250	.01 650	.00 400	76%	.02 376	190%
Algona	.01 100	.01 386	.00 286	79%	.01 980	180%
Alton	.01 250	.01 848	.00 598	68%	.02 706	216%
Ames	.01 000	.01 056	.00 056	95%	.01 584	158%
Aredale	.01 000	.01 155	.00 155	87%	.01 650	165%
Armstrong	.01 250	.01 815	.00 565	69%	.02 574	206%
Avoca	.01 050	.00 594	(.00 456)	177%	.00 924	88%
Bancroft	.01 100	.01 518	.00 418	72%	.02 112	192%
Bedford	.00 900	.00 198	(.00 702)	454%	No R R	—0—
Bode	.01 100	.01 518	.00 418	72%	.02 244	204%
Boone	.01 050	.01 056	.00 006	99%	.01 584	150%
Boxholm	.01 050	.01 188	.00 138	88%	.01 782	170%
Boyden	.01 250	.01 782	.00 532	70%	.02 442	195%
Britt	.01 050	.01 353	.00 303	78%	.01 980	189%
Cedar Rapids	.00 750	.00 396	(.00 354)	189%	.00 594	79%
Churdan	.01 050	.01 221	.00 171	86%	.01 848	176%
Coin	.00 900	.00 561	(.00 339)	160%	No R R	—0—
Crescent	.01 050	.01 023	(.00 027)	103%	No R R	—0—
Dickens	.01 250	.01 650	.00 400	76%	.02 376	190%
Edna	.01 250	.01 914	.00 664	65%	.02 673	214%
Estherville	.01 250	.01 749	.00 499	71%	.02 574	206%
Everly	.01 250	.01 782	.00 532	70%	.02 442	195%
Fredericksburg	.00 900	.00 990	.00 090	91%	.01 386	154%
Galt	.01 050	.01 188	.00 138	88%	.01 782	170%
Gaza	.01 250	.01 848	.00 598	68%	.02 574	206%
George	.01 250	.01 914	.00 664	65%	.02 673	214%
Gravity	.00 900	.00 561	(.00 339)	160%	No R R	—0—
Griswald	.01 000	.00 594	(.00 406)	168%	No R R	—0—
Hampton	.01 000	.01 089	.00 089	92%	.01 584	158%
Hartly	.01 250	.01 848	.00 598	68%	.02 442	195%
Hull	.01 250	.01 782	.00 532	70%	.02 574	206%
Ionia	.00 900	.00 990	.00 090	91%	.01 386	154%
Janesville	.00 900	.00 858	(.00 042)	105%	.01 254	139%
Kanawha	.01 050	.01 353	.00 303	78%	.01 980	189%

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

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ROCK RAPIDS (CHAMPLIN) TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				–Freight Rates*–	
Iowa Cont.	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Kensett	.01 000	.01 419	.00 419	70%	.01 914	191%
Lake Mills	.01 050	.01 419	.00 369	74%	.01 914	182%
Lake View	.01 100	.01 221	.00 121	90%	.01 848	168%
Le Mars	.01 250	.01 650	.00 400	76%	.02 442	195%
Lytton	.01 100	.01 221	.00 121	90%	.01 848	168%
Malvern	.01 000	.00 726	(.00 274)	138%	No R R	—0—
Mapleton	.01 250	.01 320	.00 070	95%	.01 980	158%
Marcus	.01 250	.01 650	.00 400	76%	.02 442	195%
Marshalltown	.00 900	.00 891	(.00 009)	101%	.01 320	147%
Mason City	.01 000	.01 221	.00 221	82%	.01 716	172%
Maurice	.01 250	.01 815	.00 565	69%	.02 508	201%
Merrill	.01 250	.01 650	.00 400	76%	.02 442	195%
Milford	.01 250	.01 650	.00 400	76%	.02 376	190%
Minden	.01 050	.00 792	(.00 258)	133%	No R R	—0—
Nashua	.00 900	.00 990	.00 090	91%	.01 386	154%
New Market	.00 900	.00 627	(.00 273)	144%	No R R	—0—
Ocheyedan	.01 250	.01 881	.00 631	66%	.02 442	195%
Orange City	.01 250	.01 848	.00 598	68%	.02 574	206%
Oskaloosa	.00 800	.00 495	(.00 305)	162%	No R R	—0—
Paullina	.01 250	.01 815	.00 565	69%	.02 640	211%
Perry	.01 000	.01 056	.00 056	95%	.01 584	158%
Peterson	.01 250	.01 749	.00 499	71%	.02 574	206%
Plymouth	.01 000	.01 419	.00 419	70%	.01 914	191%
Pocahontas	.01 100	.01 617	.00 517	68%	.02 376	216%
Radcliffe	.01 000	.01 089	.00 089	92%	.01 584	158%
Readlyn	.00 900	.00 825	(.00 075)	109%	.01 254	139%
Rembrandt	.01 250	—0—	—0—	—0—	.01 848	148%
Ringsted	.01 250	.01 518	.00 268	82%	.02 112	169%
Rock Rapids	.01 250	—0—	—0—	—0—	.03 300	264%
Rock Valley	.01 250	.01 782	.00 532	70%	.02 442	195%
Rudd	.01 000	.01 155	.00 155	87%	.01 650	165%
St. Ansgar	.01 000	.01 254	.00 254	80%	.01 650	165%
Sac City	.01 100	.01 353	.00 253	81%	.01 980	180%
Shelden	.01 250	.01 881	.00 631	66%	.02 442	195%
Sibley	.01 250	.01 914	.00 664	65%	.02 805	224%
Sioux Center	.01 250	.01 848	.00 598	68%	.02 574	206%

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

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ROCK RAPIDS (CHAMPLIN) TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	—Actual "Differentials"—				-Freight Rates*-	
Iowa Cont.	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Spencer	.01 250	.01 650	.00 400	76%	.02 376	190%
Spirit Lake	.01 250	.01 749	.00 499	71%	.02 442	195%
Storm Lake	.01 250	.01 551	.00 301	81%	.01 848	148%
Sumner	.00 750	.00 990	.00 240	76%	.01 386	185%
Sutherland	.01 250	.01 782	.00 532	70%	.02 442	195%
Swaledale	.01 050	.01 254	.00 204	84%	.01 782	170%
Swea City	.01 100	.01 749	.00 649	63%	.02 442	222%
Valley Jct.	.01 000	.00 759	(.00 241)	132%	No R R	—0—
Waterloo	.00 900	.00 858	(.00 042)	105%	.01 254	139%
West Bend	.01 100	.01 584	.00 484	69%	.02 310	210%
What Cheer	.00 800	.00 297	(.00 503)	269%	No R R	—0—

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

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ROCK RAPIDS (CHAMPLIN) TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				–Freight Rates*–	
Minnesota	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Adrian	.01 250	.01 881	.00 631	66%	.02 640	211%
Albert Lea	.01 200	.01 419	.00 219	85%	.01 914	159%
Alexandria	.01 150	.01 584	.00 434	73%	.02 046	178%
Austin	.01 150	.01 320	.00 170	87%	.01 848	161%
Badger	.01 000	.00 990	(.00 010)	101%	.01 815	182%
Browns Valley	.01 200	.01 452	.00 252	83%	.01 980	165%
Cedar Mills	.00 924	.00 693	(.00 231)	133%	.01 320	143%
Clements	.01 250	.01 650	.00 400	76%	.02 310	185%
Clinton	.01 200	.01 749	.00 549	69%	.02 244	187%
Edgerton	.01 250	.01 914	.00 664	65%	.02 706	216%
Elbow Lake	.01 150	.01 386	.00 236	83%	.01 914	166%
Elrosa	.01 150	.01 452	.00 302	79%	No R R	—0—
Frazee	.01 050	.01 254	.00 204	84%	.02 046	195%
Gary	.01 000	.01 254	.00 254	80%	.01 980	198%
Good Thunder	.01 250	.01 551	.00 301	81%	.02 178	174%
Granite Falls	.01 250	.01 551	.00 301	81%	.00 990	79%
Greenbush	.01 000	.01 122	.00 122	89%	.01 914	191%
Halma	.01 000	.01 188	.00 188	84%	.02 079	208%
Heron Lake	.01 250	.01 914	.00 664	65%	No R R	—0—
Hills	.01 250	.01 914	.00 664	65%	.02 673	214%
Hutchinson	.01 200	.00 924	(.00 276)	130%	.01 452	121%
Iona Lake	.01 250	.01 914	.00 664	65%	.02 574	206%
Lake Lillian	.01 250	.00 627	(.00 623)	199%	.01 122	90%
Leota	.01 250	—0—	—0—	—0—	No R R	—0—
Litchfield	.01 200	.01 419	.00 219	85%	.02 178	182%
Luverne	.01 250	.01 914	.00 664	65%	.02 805	224%
Madison	.01 250	.01 947	.00 697	64%	.02 772	222%
Mankato	.01 250	.01 551	.00 301	81%	.02 178	174%
Marshall	.01 250	.01 716	.00 466	73%	.02 508	201%
Montevideo	.01 056	.01 056	—0—	100%	.01 386	131%
Moorehead	.01 000	.01 188	.00 188	84%	.01 914	191%
Morgan	.01 250	.01 551	.00 301	81%	.02 178	174%
Olivia	.01 250	.00 825	(.00 425)	152%	.01 188	95%
Minneapolis	.01 150	.01 188	.00 038	97%	.01 650	143%
Parker Prairie	.01 100	.01 584	.00 484	69%	.02 244	204%
Park Rapids	.01 050	.01 188	.00 138	88%	.01 914	182%

*Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

ROCK RAPIDS (CHAMPLIN) TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				—Freight Rates*—	
Minnesota cont'd.	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Pelican Rapids	.01 100	.01 320	.00 220	83%	.02 046	186%
Pennock	.01 200	.01 650	.00 450	73%	.02 310	193%
Pipestone	.01 250	.01 914	.00 664	65%	.02 574	206%
Prinsburg	.00 900	.00 528	(.00 372)	170%	.00 924	103%
Redwood Falls	.01 250	.01 518	.00 268	82%	.02 112	169%
Renville	.00 924	.00 825	(.00 099)	112%	.01 122	121%
Roosevelt	.01 000	—0—	—0—	—0—	.01 848	185%
Roseau	.01 000	.01 056	.00 056	95%	.01 980	198%
Slayton	.01 250	.01 914	.00 664	65%	.02 574	206%
Springfield	.01 250	.01 617	.00 367	77%	.02 244	180%
West Union	.01 150	.01 617	.00 467	71%	.02 046	178%
Wilmont	.01 250	.01 815	.00 565	69%	.02 508	201%
Windom	.01 250	.01 881	.00 631	66%	.02 574	206%
Worthington	.01 250	.01 815	.00 565	69%	.02 508	201%

*Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

825 Exhibit 20

ROCK RAPIDS (CHAMPLIN) TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	—Actual "Differentials"—				—Freight Rates*—	
South Dakota	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Aberdeen	.01 150	.01 881	.00 731	61%	.02 442	212%
Agar	.01 100	.02 112	.01 012	52%	.02 376	216%
Arlington	.01 250	.02 244	.00 994	56%	.03 168	253%
Armour	.01 250	.02 046	.00 796	61%	.02 904	232%
Beresford	.01 250	.01 782	.00 532	70%	.02 442	195%
Blunt	.01 100	.02 145	.01 045	51%	.02 970	270%
Bowdle	.01 050	.01 782	.00 732	59%	.02 442	233%
Bristol	.01 200	.01 914	.00 714	63%	.02 574	215%
Butler	.01 200	.01 980	.00 780	61%	.02 574	215%
Canton	.01 250	.01 782	.00 532	70%	.02 574	206%
Carthage	.01 250	.02 145	.00 895	58%	.02 838	227%
Chancellor	.01 250	.02 013	.00 763	62%	.02 904	232%
Clark	.01 250	.02 178	.00 928	57%	.03 036	243%
Colman	.01 250	.02 013	.00 763	62%	.02 772	222%
De Smet	.01 250	.02 112	.00 862	59%	.02 838	227%
Dimock	.01 250	.01 782	.00 532	70%	.02 310	185%
Emery	.01 250	.02 046	.00 796	61%	.02 706	216%
Estelline	.01 250	.02 211	.00 961	57%	.03 168	253%
Flandreau	.01 250	.01 914	.00 664	65%	.02 706	216%
Frederick	.01 100	.01 815	.00 715	61%	.02 706	246%
Garretson	.01 250	.01 914	.00 664	65%	.02 673	214%
Gettysburg	.01 100	.02 112	.01 012	52%	.02 376	216%
Gregory	.01 150	.01 221	.00 071	94%	.04 290	373%
Harford	.01 250	.02 112	.00 862	59%	.03 036	243%
Herreid	.01 000	.01 386	.00 386	72%	.02 706	271%
Howard	.01 250	.02 211	.00 961	57%	.03 168	253%
Hurley	.01 250	.01 848	.00 598	68%	.02 244	180%
Huron	.01 250	.01 914	.00 664	65%	.02 508	201%
Ipswich	.01 100	.01 650	.00 550	66%	.02 310	210%
Kimball	.01 200	.01 980	.00 780	61%	.02 574	215%
La Bolt	.01 250	.02 145	.00 895	58%	.03 036	243%
Lebanon	.01 100	.02 112	.01 012	52%	.02 442	222%
Lennox	.01 250	.01 848	.00 598	68%	.02 508	201%
Madison	.01 250	.02 013	.00 763	62%	.02 772	222%
Marion Jct.	.01 250	.02 145	.00 895	58%	.03 102	248%
Mitchell	.01 250	.01 980	.00 730	63%	.02 706	216%

* Note.—Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

ROCK RAPIDS (CHAMPLIN) TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	—Actual "Differentials"—				—Freight Rates*—	
S. Dakota cont.	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Mobridge	.01 000	.01 980	.00 980	51%	.01 980	198%
Montrose	.01 250	.02 079	.00 829	60%	.02 838	227%
New Effington	.01 150	.01 485	.00 335	77%	.02 112	184%
Newell	.01 000	.01 254	.00 254	80%	.01 650	165%
Parker	.01 250	.02 013	.00 763	62%	.02 772	222%
Parkston	.01 250	.01 815	.00 565	69%	.02 574	206%
Pierre	.01 100	.02 112	.01 012	52%	.02 376	216%
Platte	.01 200	.01 881	.00 681	64%	.02 376	198%
Presho	.01 100	.02 211	.01 111	50%	.03 036	276%
Raymond	.01 200	.02 112	.00 912	57%	.02 904	242%
Rosholt	.01 050	.01 518	.00 468	69%	.02 574	245%
Scotland	.01 250	.01 914	.00 664	65%	.02 838	227%
Sioux Falls	.01 250	.01 881	.00 631	66%	.03 168	253%
Sisseton	.01 150	.01 551	.00 401	74%	.02 046	178%
Stickney	.01 250	.01 980	.00 730	63%	.03 036	243%
Summit	.01 200	.01 863	.00 483	71%	.02 178	182%
Viborg	.01 250	.01 782	.00 532	70%	.02 442	195%
Wagner	.01 250	.01 749	.00 499	71%	.02 574	206%
Wakonda	.01 250	.01 650	.00 400	76%	.02 244	180%
Watertown	.01 250	.02 145	.00 895	58%	.03 234	259%
Waubay	.01 200	.01 782	.00 582	67%	.02 574	215%
Webster	.01 200	.01 782	.00 582	67%	.02 706	226%
Wessington	.01 200	.02 112	.00 912	57%	.02 904	242%
Wessington Springs	.01 250	.02 013	.00 763	62%	.02 904	232%
White Lake	.01 250	.02 013	.00 763	62%	.02 706	216%
Winner	.01 056	.01 056	—0—	100%	.04 442	419%
Woonsocket	.01 250	.02 013	.00 763	62%	.02 640	211%
Worthing	.01 250	.01 848	.00 598	68%	.02 508	201%
Yale	.01 250	.02 178	.00 928	57%	.03 036	243%
Yankton	.01 250	.01 650	.00 400	76%	.02 244	180%

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

827 Exhibit 20

ROCK RAPIDS (CHAMPLIN) TERMINAL

"Differentials" in effect May 9, 1948 (date of abandonment of that method of pricing) in comparison with those of November 12, 1941 (date of hearing of Valuation Docket No. 1267) and with freight rates* in effect May 9, 1948.

The "Differentials" in effect May 9, 1948 include all towns or destinations in which Champlin had customers.

	——Actual "Differentials"——				–Freight Rates*–	
N. Dakota	*May 9, 1948*	*Nov. 12, 1941*	*Reduction*	*Ratio 1948 to 1941*	*May 9, 1948 Per Gallon*	*Ratio to May 9, 1948 Differentials*
Adams	.01 000	.01 254	.00 254	80%	.01 914	191%
Adrian	.01 000	.01 254	.00 254	80%	.02 178	218%
Aneta	.01 000	.01 188	.00 188	84%	.02 046	205%
Berlin	.01 000	.01 386	.00 386	72%	.02 112	211%
Berwick	.01 000	.01 188	.00 188	84%	.00 792	79%
Christine	.01 050	.01 353	.00 303	78%	.02 508	239%
Cooperstown	.01 000	.01 320	.00 320	76%	.02 112	211%
Dahlen	.01 000	.01 122	.00 122	89%	.01 980	198%
Dickey	.01 000	.01 254	.00 254	80%	.02 244	224%
Fargo	.01 000	.01 188	.00 188	84%	.01 914	191%
Langdon	.01 000	.01 188	.00 188	84%	.01 914	191%
Larimore	.01 000	.01 188	.00 188	84%	.01 980	198%
Ledgerwood	.01 100	.01 650	.00 550	67%	.02 244	204%
Maddock	.01 000	.01 386	.00 386	72%	.01 980	198%
Mayville	.01 000	.01 188	.00 188	84%	.01 914	191%
Milnor	.01 050	.01 518	.00 468	69%	.02 178	207%
Munich	.01 000	.01 122	.00 122	89%	.01 782	178%
Steele	.01 000	.01 518	.00 518	66%	.02 046	205%
Verona	.01 000	.01 452	.00 452	69%	.02 112	211%

* Note: Freight rates represent the difference (per gallon) in the cost of freight from Enid (Group 3) and the cost of freight from the terminal to the respective destinations.

828 In the Supreme Court of the United States
October Term, 1950

No. 433

Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof—Filed December 13, 1950

1. Now come appellants United States of America and Interstate Commerce Commission, and for their statement of points upon which they intend to rely in their appeal to this Court, adopt the points specified in their assignment of errors heretofore filed.

2. The parts of the record which appellants think necessary for the consideration of the foregoing points are:

a. The record in this cause filed in this Court pursuant to appellants' praecipe to the Clerk of the United States District Court for the Western District of Oklahoma, but including only those parts of Item 19 of the praecipe specified in paragraph b, *infra*, and excluding the following items of the praecipe:

(1) Item 5, the order setting the case for hearing in the district court.

(2) Item 6, the transcript of the proceedings and argument before the district court on November 19 and 21, 1949.

829 (3) Item 8, the proposed findings of fact and conclusions of law filed by the United States and the Interstate Commerce Commission.

(4) Item 10, the transcript of the proceedings at the hearing before the district court on the proposed findings of fact and conclusions of law, held August 28, 1950.

(5) Item 17, the statement as to jurisdiction.

b. Only the following parts of the record before the Interstate Commerce Commission in the *Matter of Champlin Refining Company*, Docket Nos. 29912 and 29912 (Sub-No. 1), which is Item 19 of the praecipe, should be printed:

Volume I: The transcript of the hearing before Examiner Kelley on July 20 and 21, 1948, constituting pages 13-128, inclusive, of the record before the Interstate Commerce Commission.

Volume II: Interstate Commerce Commission Exhibits No. 4, pages 264-438, and No. 5, pages 439-506, inclusive.
(No part of Volume III is to be printed.)
Volume IV: The following exhibits introduced before the Commission by appellee (then respondent) Champlin Refining Company:
Ex. 1, p. 803
Ex. 3A, pp. 806-811
Ex. 3B, pp. 812-813
Ex. 10, pp. 820-824
Ex. 11, pp. 825-829
Ex. 12, pp. 830-831
Ex. 13, pp. 832-834
Ex. 14, pp. 835-840
Ex. 15, pp. 841-846
Ex. 17, pp. 848-852
Ex. 18, pp. 853-858
Ex. 19, pp. 859-864
Ex. 20, pp. 865-877
(No part of Volume V is to be printed.)

830 c. The stipulation between the parties as to reference to parts of the record not printed, filed December 13, 1950.

d. This designation.

Appellants designate the foregoing parts of the record to be printed by the Clerk of this Court.

PHILIP B. PERLMAN
Philip B. Perlman,
Solicitor General.

DANIEL W. KNOWLTON
Daniel W. Knowlton,
Chief Counsel,
Interstate Commerce Commission.

Service acknowledged.
this 13th day of December, 1950.
HARRY O. GLASSER,
For the Champlin Company.

831 (File Endorsement Omitted)

832 In the Supreme Court of the United States
October Term, 1950

No. 433

Stipulation as to Record and Exhibits—Filed December 13, 1950

1. It is hereby stipulated by and between the parties herein, that on hearing of the appeal before this Court, in the above-entitled case, either side or any party by counsel, or the Court or any member thereof may refer to such of the original record in the case as has not been printed, with the same force and effect as if the same had been printed in full in the transcript of record.

2. It is further stipulated, by and between the parties herein, that on hearing of the appeal before this Court, in the above-entitled case, either side or any party by counsel or the Court or any member thereof may quote from and refer to such Exhibit 22, Rec. pp. 879-939, which is a true copy of the Transcript of Record in the *Uncle Sam Oil Company* case No. 507, October Term 1913, and printed at pp. 568 to 628 inclusive of the transcript in the former appeal identified throughout the record as the "Valuation Case" being No. 75, October Term 1945, with the same effect as if such text of such exhibit was again printed in its entirety in this record, and

May likewise quote from and refer to such Exhibit 23, Rec. pp. 940-1003 inclusive above referred to, which is a true copy of Brief filed for the *Uncle Sam Oil Company* in case No. 507, October Term 1913, and printed at pp. 629-692 inclusive of the transcript in the former appeal identified throughout the record as the "Valuation Case" (being No. 75, October Term 1945) with the same effect as if
833 such text of such exhibit was again printed in its entirety in this record, and

May likewise quote from and refer to such Exhibit 24, Rec. pp. 1004-1109 inclusive above referred to which is a true copy of the Brief filed for the Government in the *Pipe Line, Uncle Sam* and other cases as Nos. 481, 482, 483, 506, 507 and 508, October Term 1913, and printed at pp. 693-798 inclusive in the former appeal identified throughout the record as the "Valuation Case" (being No. 75, October Term 1945) with the same effect as if such text of such exhibit was again printed in its entirety in this record, and

May likewise quote from and refer to such Exhibit 25, Rec. pp. 1110-1191 inclusive above referred to, which is a true copy of the Brief filed for the Interstate Commerce

Commission in the *Pipe Line, Uncle Sam* and other cases as Nos. 481, 482, 483, 506, 507 and 508, October Term 1913, and printed at pp. 799-880, inclusive in the former appeal identified throughout the record as the "Valuation Case" (being No. 75, October Term 1945) with the same effect as if such text of such exhibit was again printed in its entirety in this record.

3. It is further agreed that Champlin Refining Company, Appellee, will furnish to the Clerk of this Court, for insertion into the record, sufficient copies of the maps and charts constituting the following exhibits:

Exhibit 2, page 804
Exhibit 3, page 805
Exhibit 4, page 814
Exhibit 5, page 815
Exhibit 6, page 816
Exhibit 7, page 817
Exhibit 9, page 819
Exhibit 16, page 847

PHILIP B. PERLMAN
Solicitor General
For the United States

DANIEL W. KNOWLTON
Chief Counsel for
Interstate Commerce Commission

HARRY O. GLASSER
Attorney for
Champlin Refining Company, Appellee

834 (File Endorsement Omitted)

835 In the Supreme Court of the United States
October Term, 1950

No. 433

Appellee's Designation for Printing of Additional Parts of the Record Which Appellee Thinks Material—Filed Dec. 22, 1950

Pursuant to Paragraph 9 of Rule 13, the appellee hereby designates the following additional parts of the record for printing, which appellee thinks material, viz.:

(1) Pages 1-12 (i), incl., transcript of the record of the proceedings before the Interstate Commerce Commission.

(2) Report and order of the Interstate Commerce Commission, pages 215-233, of the proceedings before the Interstate Commerce Commission.

(3) Pages 234-259, incl. of the proceedings before the Interstate Commerce Commission.

(4) Commission's Exhibits filed in the proceedings before the Interstate Commerce Commission, as follows:

No. 1, pp. 260-261, incl.
No. 2, p. 262
No. 3, p. 263
No. 4, pp. 264-438, incl.
(This designation is made to correct appellant's designation of pages 264-438, incl., as a part of Exhibit 5.)
No. 5, pp. 439-506
(This corrected designation to properly identify pp. 439-506, incl., as Exhibit 5, only.)

(5) Respondent's Exhibits, in color, filed in the proceedings before the Interstate Commerce Commission, as follows:

836 Ex. 2, page 804
Ex. 3, page 805
Ex. 4, page 814
Ex. 5, page 815
Ex. 6, page 816
Ex. 7, page 817
Ex. 9, page 819
Ex. 16, page 847

which Exhibits appellee is to furnish, in color, for the printer, in sufficient number of copies to meet the requirements of the Court.

(6) All of Page 49, except last (2) two lines, of Transcript of Proceedings of November 19, 1949, in the District Court.

DATED at Washington, D. C., this 14th day of December, 1950.

HARRY O. GLASSER
Harry O. Glasser
Of Counsel for
Champlin Refining Co., Appellee

837 Receipt is acknowledged of a copy of the within APPELLEE'S DESIGNATION FOR PRINTING OF ADDITIONAL PARTS OF THE RECORD WHICH APPELLEE THINKS MATERIAL this 22nd day of December, 1950.

PHILIP B. PERLMAN

MC

838 (File Endorsement Omitted)

839 Supreme Court of the United States

No. 433—, October Term, 1950

Order Noting Probable Jurisdiction—Filed January 2, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

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No. 433

In the Supreme Court of the United States

OCTOBER TERM, 1950

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

v.

CRAMPTON REFINING COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

STATEMENT AS TO JURISDICTION

STATEMENT AS TO JURISDICTION

In compliance with Rule 12, as amended, of the Rules of the Supreme Court of the United States, defendants-appellants United States of America and Interstate Commerce Commission submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this case on August 28, 1950.

OPINIONS BELOW

The report of the Interstate Commerce Commission is found in 274 I.C.C. 409. The opinion of the District Court for the Western District of Oklahoma is not yet reported. Copies of these documents are attached hereto.

JURISDICTION

The judgment of the specially-constituted, three-judge, district court, setting aside the order of the Interstate Commerce Commission, was entered on August 28, 1950. A petition for appeal is presented herewith on October 25, 1950. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this case on direct appeal: *Champlin Rfg. Co.* v. *United States*, 329 U.S. 29; *Valvoline Oil Co.* v. *United States*, 308 U.S. 141.

QUESTIONS PRESENTED

In *Champlin Refining Co.* v. *United States*, 329 U.S. 29, this Court upheld the power of the Inter-

state Commerce Commission, acting under Section 19(a) of the Interstate Commerce Act, to require Champlin to furnish it certain inventories, schedules, maps and charts of its pipe line property. Subsequently, the Commission, invoking Section 20(1), (2), (3), (4), and (8), and Section 6 of the Interstate Commerce Act, ordered Champlin to file annual periodical or special reports, to institute and maintain a uniform system of accounts, and to publish and file tariff schedules showing the rates and charges for its interstate transportation of refined petroleum products. This order the court below set aside as violative of the statute and the Due Process Clause. The questions presented are:

1. Whether the Commission acted within the powers granted it by the Interstate Commerce Act in entering the order.

2. Whether, if the order is within the Commission's power under the Act, the Act, as so applied, is constitutional.[1]

STATUTES INVOLVED

Pertinent portions of the Interstate Commerce Act, 24 Stat. 379, as amended, 49 U.S.C. 1, *et seq.*, provides as follows:

> Sec. 1 (1) That the provisions of this part (Part I) shall apply to common carriers engaged in—
>
> * * * * *
>
> (b) The transportation of oil or other commodity, except water and except natural or

[1] The questions presented summarize the points raised in the Assignment of Errors, which are also presented.

artificial gas, by pipe line * * * from one State * * * to any other state * * *.

* * * * *

(3) (a) The term "Common carrier" as used in this part shall include all pipe-line companies * * *.

* * * * *

Sec. 6 (1) that every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established.

* * * * *

Sec. 20 (1) The Commission is hereby authorized to require annual, periodical, or special reports from carriers (as defined in this section) * * *.

* * * * *

(3) The Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this part, prescribe a uniform system of accounts applicable to any class of carriers subject thereto, * * *.

* * * * *

(8) As used in this section * * * the term "carrier" means a common carrier subject to this part * * *.

STATEMENT

Appellee, hereinafter referred to as Champlin, is a corporation engaged in the purchase and production of crude oil, refining, and the transportation and sale of the refined products. The greater part of the crude oil used in its business is purchased from other producers. All refining is done at Champlin's plant at Enid, Oklahoma, and the refined products are sent out through its pipeline running from Enid, through Hutchinson, Kansas, and Superior, Nebraska, to Rock Rapids, Iowa, a distance of approximately 516 miles. Champlin has storage and marketing facilities at each of these three towns, and the line has no other outlets. The products are collected in storage tanks at each of these terminals, and there loaded into trucks or tank cars for delivery to the purchaser. In some instances, further processing, called "blending," is performed after the products arrive at the terminals.

Champlin prices its products under a system which purports to quote prices f.o.b. its terminal nearest the customer. This posted price is frequently adjusted by an "allowance," which ranges from 1/8 to 1/2 cent per gallon, and is intended to meet competitive prices in the area. Although the posted price must inevitably reflect the cost of bringing the product to the terminal, no separate charge is stated for transportation. Formerly the prices were stated f.o.b. the Enid refinery, and a sum added thereto called a "differential," which was usually the railroad freight rate from Enid to the destination (usually the purchaser's place of business), less the charges from the pipe-line terminal

to final destination. This amount did not purport to state the cost of the transportation to Champlin. Furthermore, the price thus computed was often arbitrarily adjusted to meet the prices of competitors.

Champlin has apparently never carried the products of any other refiner in its line, nor has it ever offered to perfrom such carriage for the public. Since the construction of the line and its acquisition by Champlin, it has always been used for the same purpose—to transport Champlin's products to the markets at an economic advantage.

In 1941, the Interstate Commerce Commission, being of the opinion that Champlin was subject to its jurisdiction as defined in Section 1 of the Interstate Commerce Act, 49 U.S.C. 1, began proceedings to obtain valuation information from Champlin under the provisions of Section 19a of the Act, which refers for its scope to Section 1. Champlin began an action to enjoin the Commission's order in this matter. *Champlin Refining Co.* v. *United States,* 59 F. Supp. 978. This Court upheld the district court's dismissal of that action in *Champlin Refining Co.* v. *United States,* 329 U.S. 29.

Subsequently, the Commission instituted proceedings to require Champlin to comply with other provisions of the Commerce Act applicable to pipeline companies. Orders were issued requiring Champlin (1) to file annual and other reports as required under Section 20 of the Act; (2) to adopt the system of accounts prescribed by the Commission under Section 20; and (3) to file tariffs as required by Section 6 of the Act. Immediately fol-

lowing the commencement of this Commission proceeding, Champlin changed its pricing system from that in effect at the time of this Court's decision to the system described above as being in present use.[2] After a hearing, the Commission held that Champlin was subject to these requirements, and issued its order commanding compliance. *Champlin Refining Co.*, 274 I.C.C. 409 (1949).

The present action was brought in the United States District Court for the Western District of Oklahoma, under 28 U.S.C. 1336 and 2321, seeking to enjoin and set aside this order of the Commission. The majority of the court below held that Champlin is not "so engaged in transportation within the meaning of the 'Act' that the Commission may require it to transport petroleum products for others as a common carrier for hire." The court further stated that to construe the Act to apply to Champlin would violate the Due Process Clause of the Fifth Amendment to the Constitution of the United States. Judge Murrah, dissenting, saw no significant distinction between the former case and the present, and thought the situation governed by this Court's previous decision.

THE QUESTIONS ARE SUBSTANTIAL

The issues involved in this appeal are of importance to the pipe-line industry and to the Interstate Commerce Commission in exercising its jurisdiction over that industry. The principles of the district court's decision, if generally applied, might exclude from regulation a large segment of this

[2] In some instances this did not change the actual price. The practice of departing from the prices to meet competition continued.

industry. Moreover, widespread attempts to evade regulation by artificial changes in pricing methods would be invited.

1. This Court has already rejected Champlin's contention that it is not subject to the Interstate Commerce Act as a pipe line falling within the class excepted by the so-called "Uncle Sam" rule announced in *The Pipe Line Cases*, 234 U.S. 548, 562. *Champlin Refining Co.* v. *United States*, 329 U.S. 29. The situation here was distinguished from that in *Uncle Sam* on the ground that Champlin was transporting the products after refining not for its own use but for the purpose of marketing at an economic advantage, and that the pricing method used supported the view that Champlin was engaged in "transportation" within the meaning of Section 1 even though it owned the products when they were transported.

The essentials of Champlin's practices are unchanged today, as the Commission found. Champlin's changed pricing system, a mere attempt to avoid the consequences of this Court's decision, does not alter the significant economic factors in its earlier practice. Today, as at the time of the earlier decision, Champlin does not move oil for its own use, but instead operates its interstate pipe line to put its finished products in the market at the greatest economic advantage.

The application of Sections 6 and 20 here, like the application of Section 19a in the first *Champlin* case (329 U.S. 29), depends upon the reading given to the language of Section 1, defining the Act's coverage. The opinion of this Court in the first

case nowhere suggests that the definitions in Section 1 have a different meaning in their application to the various other sections. The intention of Congress expressed in the Hepburn Act was not merely to provide for the regulation of pipe-line companies which were common carriers by existing law, but instead to provide for the regulation of all pipe-line transportation, as defined in the Act. *The Pipe Line Cases,* 234 U. S. 548; *Valvoline Oil Co.* v. *United States,* 308 U.S. 141; *Champlin Refining Co.* v. *United States,* 329 U.S. 29. The district court erred in concluding that the statute did not embrace Champlin's operations.

2. The reason for the inconsistency between the decision of the court below and this Court's decision in *Champlin Refining Co.* v. *United States,* 329 U.S. 29, is the view of the district court that now, for the first time, the Commission has imposed on Champlin a common carrier status, which would require it to carry the petroleum product of others. But, as the Commission stated in its report,

> there has never been and is not now any physical connection between (Champlin's) pipe line and any other pipe line or facility which would permit the use of respondent's line by any one but its owner. So far as appears, no other pipe-line company has threatened to force such a connection, and because of the ample common-carrier pipe-line facilities available, as revealed by respondent, no refinery would be likely to interest itself in such a connection. Nor are we referred to any order of this or any other governmental agency which would require such a result, or to any law, State or

> Federal, which would support such an order. So far as appears, therefore, the filing of tariffs and of annual and other reports would not prove to be a hardship to respondent and would not deprive it of any of its traffic or of the free use of its property, including the pipe-line facilities, without interference from its competitors.

The report and accounting phases of the Commission's order certainly cannot be read as requiring Champlin to carry the oil of the others. And the tariff filing requirements have scope in that they relate to the charges Champlin may make to its customers for transporting the petroleum products it has always carried through its pipe line to the market. Thus, as Judge Murrah dissenting below put it, "There is nothing in the order of the Commission which has the effect of requiring Champlin to convert its private pipe line into a common carrier in fact. Certainly there is nothing in the order requiring Champlin to provide new inlets or outlets, or for that matter, to make any structural or operational changes in its system whatever."

3. Even if this case presented the constitutional question whether the Commission could order a so-called "private pipe line" to carry the products of others tendered to it for transport, the Government would be of the view that the court below erred in holding a statute authorizing such an order invalid. For the constitutional objections here raised were put to rest in the *Pipe Line Cases*, 234 U.S. 548.

One of the companies there involved was the

Standard Oil Company of Louisiana, which, like Champlin here, was incorporated after the passage of the Hepburn Act. With respect to such post-Hepburn act pipe lines, this Court said (234 U.S. at 561):

> So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.

Moreover, as pointed out in the former *Champlin* case, 329 U.S. at 35, the "power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier." The considerations which led Congress to exercise this power over traditionally private carriers are discussed in the *Pipe Line Cases*. The danger of domination of the most economical means of petroleum transportation by companies which refuse to carry the products of others has not disappeared. The Constitution does not deny to Congress power to cope with such danger or make that power depend on whether the pipe line is denominated a private or a common carrier. And the fact that Champlin's operations are relatively small is not material. *Valvoline Oil Co.* v. *United States, supra,* 147.

It is submitted, therefore, that the decision below erroneously construes Section 1 of the Commerce Act to limit the jurisdiction of the Interstate Commerce Commission, and casts unwarranted doubt upon the constitutionality of this statute as properly construed. The constitutional assumptions made by the court below and its resultant reading

of the statute raise substantial questions of general importance..

Respectfully submitted,

/s/ PHILIP B. PERLMAN,
Solicitor General.
/s/ DANIEL W. KNOWLTON,
Chief Counsel, Interstate Commerce Commission.

(Clerk's Note, Copy of Court's Opinion, filed July 12, 1950, proposed Findings of Fact, Conclusions of Law and Decree submitted by the Commission, omitted here for reason incorporated elsewhere in this Record.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 29912 [3]

CHAMPLIN REFINING COMPANY ACCOUNTS AND REPORTS

Submitted May 10, 1949. Decided June 13, 1949

Champlin Refining Company found to be a statutory common carrier of petroleum products by pipe line in interstate commerce, and required to comply with the provisions of sections 6 and 20 of the Interstate Commerce Act

Harry O. Glasser, Nathan Scarritt, E. S. Champlin, and Samuel H. Horne for the respondent.

Harry L. Underwood for the Interstate Commerce Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by the respondent, and we have heard oral arguments. Exceptions and requested findings not discussed in this report reflected in our findings or conclusions have been given consideration and found not justified.

The title proceeding was instituted by order entered on February 2, 1948, by division 1, upon its own motion, because the Champlin Refining Company, herein called Champlin or the respondent, had failed to comply with the requirements of section 20 of the Interstate Commerce Act,[4] and our

[3] This report also embraces No. 29912 (Sub-No. 1), Champlin Refining Company Tariffs.

[4] Pertinent portions of sections 6 and 20 are shown in the appendix.

orders and regulations made pursuant thereto, with respect to accounting and the making and filing of annual and other reports.

No. 29912 (Sub-No. 1) was instituted by order entered on March 3, 1943, by division 2, upon its own motion, because the respondent had failed to comply with the requirements of section 6 of the act, and our orders and regulations made pursuant thereto, with respect to the publishing, posting, and filing of tariffs. The proceedings together constitute an investigation and inquiry into the acts, practices, and conduct of the respondent in respect of such noncompliance with the sections of the act named in the orders, with a view of making such orders as may be proper in the premises. They were heard together on a common record, and, after the hearing, were consolidated for our final determination.

Copies of our orders and regulations made pursuant to the requirements of sections 6 and 20 of the act, and copies of correspondence with the respondent in relation thereto, were made a part of the record. By agreement of counsel, certain parts of the record made in *Champlin Refining Co., Valuation of Pipe Line*, 49 Val. Rep. 463 and 542 (the latter, a report on reargument), were incorporated into this record by reference.

In the valuation proceeding, we found Champlin to be a common carrier of refined petroleum products by pipe line and to be subject to the provisions of the act. An order was entered directing Champlin to comply with the provisions of the valuation orders previously served upon it. Champlin's bill to set aside that order was dismissed by the District Court of the United States for the Western District of Oklahoma, 59 Fed. Supp. 978. On appeal, that action was affirmed by the Supreme Court. *Champlin Refining Co.* v. *United States*, 329 U. S. 29.

Aside from the total investment in the pipe-line and appurtenant facilities, now said to be $3,230,-

050.26, certain factual statements embodied in the reports in the valuation proceeding are admitted by respondent to be true for the purpose of the instant proceeding. The portion of those statements essential to an understanding of the issues before us follows:

> The Champlin is a corporation of the State of New Mexico, authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile gasoline pipe-line system consisting of welded 6-inch pipe extending from Enid, Oklahoma, to Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and the terminal facilities at Hutchinson and Superior, was completed in June 1935. The portion of the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.
>
> The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, trucks, and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude oil gathering

lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid.

* * * * *

Summarizing the se matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any product belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line.

The principal change in the practices of the respondent in recent years is in the method of pricing the products which are transported through its pipe line. In the report on reargument in the valuation proceeding the method then used was described as follows:

> In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot market or date-of-shipment sale, the other; or contract sale, is based on yearly contracts with its customers. The spot, or f.o.b., price of the product at Enid is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding date of

shipment. These prices are made effective at 7 a.m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The delivered price includes, in addition to the spot or f.o.b. charge at the Enid refinery, a charge called a differential which is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe-line terminal.

The differential method of pricing was abandoned on May 10, 1948. On and since that date the terminal prices have been posted at each terminal, and competitive market conditions are met by allowances under these terminal prices where required. These allowances range from 1/8 cent to 1/2 cent per gallon and are intended to place respondent's products on the market at the general market price in each locality served by the pipe line. The change-over on May 10, 1948, resulted in net increases or decreases of from 1/8 to 1/2 cent per gallon at more than 70 percent of the destinations served by respondent out of its Superior and Rock Rapids terminals. A change of 1/8 cent per gallon or more is recognized in the trade as substantial. No separate charge as such is now made for transportation, either in the invoices or in any contract for the sale of its products. It is still true, however, that the terminal price as posted takes into account the total costs of operating respondent's facilities, including the pipe line, and since the prices at each terminal must be competitive, now as prior to May 10, 1948, the net price result must

necessarily approximate what it would be under the differential method, for, as stated in respondent's brief, "respondent at its terminals must meet the prices established by the sales of its competitors constituting over 98 percent of the total market."

Champlin argues that the holding of the Supreme Court in *Champlin Refining Co.* v. *United States, supra,* that the operation of respondent's line was transportation within the meaning of the act, was based upon the use of Champlin of a differential method of basing prices, and that having now abandoned that method and installed the present method of terminal pricing, it has thereby changed the character of its operations. The language of the Court relied upon in this respect was used to point out a distinction between the operations of respondent and those of the Uncle Sam Oil Company, considered by the Court, among others, in *Pipe Line Cases,* 234 U.S. 548. The language used is as follows, page 34:

> Appellant states that as to some deliveries "rail rates were used merely as a basis for calculating a delivered price, not as a charge for transportation." Even so, and even though departures from the calculated differential are substantial and frequent, we think this practice points up a significant distinction from the Uncle Sam case.
>
> We hold that Champlin's operation is transportation within the meaning of the Act and that the statute supports the commission's order to furnish information.

As above shown, the change in the pricing method was a change in name more than in substance, the resulting terminal price, now as under the differential method, generally being the price made necessary by competition and, as such, including the transportation cost or as much of it as was or is

permissible under the prevailing competitive conditions. There is no reason to believe that the Court would have reached a different conclusion had approximately the same pricing results been reached by a method other than the differential basis then in use.

As in the valuation proceeding, respondent contends, basically, that it is not a common carrier and that its pipe-line operation is not transportation within the meaning of the act. An understanding of the arguments advanced under this contention requires a discussion of certain additional facts bearing upon respondent's operation. Champlin's marketing area, generally speaking, embraces the States of Kansas, Iowa, Minnesota, Nebraska, Colorado, and South Dakota. For all practical purposes, the entire capacity of the pipe line is used in transporting the products of Champlin's refinery for distribution in this area. Only about 1.98 percent of the total gasoline consumed in the area is moved through the pipe line and sold from respondent's terminal storage facilities. The capacity of the pipe line, 9,800 barrels a day, represents only 5 percent of the total products pipe-line capacity served by its Superior terminal and only 7 percent of the total products pipe-line capacity served at markets adjacent to the Rock Rapids terminal. The total capacity of the common-carrier lines into the Nebraska market is about 13 times that of the Champlin line and about 10 times that of the latter into the Iowa market. The common-carrier pipe-line capacity available to refineries in Oklahoma and Kansas aggregates 172,800 barrels a day, and respondent's pipe line is the smallest of any common-carrier or private pipe line operating in this territory. Apparently common-carrier pipe-line transportation is available to any small refiner in this area desiring such transportation.

Champlin's daily refining capacity of 18,000 barrels is small compared with the capacity of its

large competitors in the same area. There are 86 wholesale outlets, including refineries, pipe-line terminals, and barge terminals, in this marketing area which are competing for the business of practically every prospective customer and, in addition, any jobber in the area may purchase his products from the 60 or more refineries in Oklahoma, Kansas, Arkansas, Illinois, Indiana, Texas, Wyoming, and Montana, which deliver petroleum products into the territory by truck and rail.

The foregoing facts are cited by respondent to show that its pipe line is not clothed with a public interest, and, in fact, is not needed for public transportation. It points out that in both *Pipe Line Cases, supra,* and *Valvoline Oil Co.* v. *United States,* 308 U. S. 141, the pipe-line transportation therein concerned, excepting that of the Uncle Sam Oil Company in the first proceeding, was held to be transportation within the meaning of the act because the pipe-line companies were carrying for others "all oil offered," as in the first proceeding, and a "public interest" was found in the sole means of transporting this commodity from thousands of wells for thousands of producers," as in the second proceeding. In contrast respondent emphasizes that it refines its own oil, moves only its own storage facilities, where some of them are further processed, and subsequently markets its products from its storage tanks in the ordinary course of business.

Champlin insists that upon the facts presented its status must be held to be similar to that of the Uncle Sam Company above referred to. With respect to the operation of that company, the Court said in *Pipe Line Cases, supra,* page 562, that it was "simply drawing oil from its own wells across a State line to its own refinery for its own use." The Court considered that this was not transportation within the meaning of the act. The situation before us differs. Champlin's pipe line is not used for drawing oil to its own refinery. It is used to

transport refined products from the refinery to interstate points for sale.

Before proceeding further, it is well to call specific attention to the provisions of the act with which we are dealing. Except for minor revisions in language, these provisions as they affect pipeline companies are the same today as they were at the time of *Pipe Line Cases, supra*, 35 years ago. Section 1 of the act reads, in part, as follows:

> (1) That the provisions of this part (Part I) shall apply to common carriers engaged in—
>
> * * * * *
>
> (b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroads or by water; * * * from one State * * * to any other State * * *.
>
> * * * * *
>
> (3) (a) The term "common carrier" as used in this part shall include all pipe-line companies; * * *

In *Pipe Line Cases, supra*, pages 560-561, the Court said:

> The control of Congress over commerce among the States cannot be made the means of exercising powers not entrusted to it by the constitution, but it may require those who are common carriers in substance to become so in form. So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.

More than 20 years elapsed following that decision before Champlin's pipe line was constructed. In interpreting the term "common carrier" as used

in section 1 of the act, the Court said in *Champlin Refining Co.* v. *United States, supra,* pages 34-35:

> Admittedly Champlin is not a common carrier in the sense of the common law carrier for hire. However, the Act does not stop at this but goes on to say that its use of the term "common carrier" is to include all pipe-line companies—a meaningless addition if it thereby included only what the term without more always had included. * * * The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier.

Respondent argues that if it is required to comply with the provisions of section 6 of the act with respect to the filing of tariffs, it will be assuming the duties of a common carrier and thus be committing itself to open its line to the use of the public, so that its competitors could establish physical connections with it and largely absorb its line for their own use, thereby depriving the refinery served by the pipe line "of the only available market which it has built up through the years, and upon which the existence of the company depends." Thus, the effect of such an order it argues, would be to convert its private property to public use without its consent, contrary to the due process clause of the Constitution. It calls attention to the following observations made by the Court in *Champlin Refining Co.* v. *United States, supra,* page 35, in response to a similar contention made therein:

> But our conclusion rests on no such basis and affords no such implication. * * * The appellant in its entire period of operation has never been asked to carry the products of another and may never be. So far, the Commission has made no order which changes the appellant's obligations to any other company or person. If it does, it will be timely to consider concrete

requirements and their specific effects on appellant.

Respondent is not contending that its subjection, insofar as the pipe-line operation is concerned, to the requirements of section 20 of the act would be the equivalent of converting its private property to public use, in contravention of the fifth amendment. As stated, the provisions of part I of the act are specifically made to apply to common carriers engaged in the transportation of oil by pipe line, and the term "common carrier" as used in that part includes "all pipe-line companies." The Supreme Court has held that Champlin's operation is transportation within the meaning of the act. After referring to the holding relating to the Uncle Sam company in *Pipe Line Cases, supra,* the Court said, page 33:

> But we think it would expand the actual holding of that case to apply its conclusion to Champlin. The controlling fact under the statute is transporting commodities from State to State by pipe line.

The controlling facts surrounding the operation of this pipe line including the pricing method in its ultimate result, are the same now as they were then.

As pointed out, respondent in its pipe line has never transported oil belonging to another, and there has never been and is not now any physical connection between its pipe line and any other pipe line or facility which would permit the use of respondent's line by any one but its owner. So far as appears, no other pipe-line company has threatened to force such a connection, and because of the ample common-carrier pipe-line facilities available, as revealed by respondent, no refinery would be likely to interest itself in such a connection. Nor are we referred to any order of this or any other governmental agency which would

require such a result, or to any law, State or Federal, which would support such an order. So far as appears, therefore, the filing of tariffs and of annual and other reports would not prove to be a hardship to respondent and would not deprive it of any of its traffic or of the free use of its property, including the pipe-line facilities, without interference from its competitors.

Whether or not the effect of a requirement that respondent comply with the provisions of section 6 or section 20 of the act would be tantamount to taking private property for public use in contravention of the fifth amendment is an issue the determination of which is peculiarly within the province of the courts, and we shall make no attempt to pass upon it. All we are called upon to do, and all we are attempting to do here, is to determine whether or not the facts presented warrant a finding that respondent's pipe-line operation is "transportation" of a "common-carrier" as those terms are used in section 1 of the act and as they have been interpreted by the Supreme Court.

We find that the Champlin Refining Company is a statutory common carrier of refined petroleum products by pipe line from one State to other States, and that it is subject to the provisions of the Interstate Commerce Act. An appropriate order will be entered requiring compliance with the provisions of sections 6 and 20 of the act.

SPLAWN, Commissioner, dissenting in part:

I disagree with the conclusions and finding in this report which require respondent, Champlin Refining Company, to comply with section 6 of the act concerning the publishing, posting, and filing of tariffs.

Transportation of petroleum products by pipe line was made subject to the act by an amendment in 1906. The circumstances in which that amend-

ment was passed are stated in *Pipe Line Cases*, 234 U. S. 548, 558-559. In that proceeding, certain large oil companies, through their ownership of pipe lines, had obtained a monopoly of the only practicable oil transportation between the oil fields east of California and the Atlantic Ocean, and refused to transport any oil unless it was sold to them. The Court sustained our order which required those companies to file tariffs, pointing out (p. 560) that the "evident" purpose of the amendment "was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."

Here, the material factual situation is quite different. The pipe line under consideration in the instant proceeding is owned by Champlin, and the line always has been used exclusively to transport Champlin's own refined petroleum products from its refinery at Enid, Okla., to its storage facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids, Iowa. Champlin utilizes the entire capacity of this pipe line on a full time basis.

Thus, the evidence is clear that there has been, and is, no holding out by Champlin of a common-carrier service either directly or indirectly. None of the products moved through the line has ever been purchased from any other interest. Moreover, the evidence shows that the products transported through Champlin's pipe line constitutes an inconsequential part of the total volume of products that moves by pipe line to the consuming territory served by Champlin from its storage facilities.

Requiring Champlin to comply with our valuation orders and the requirements of section 20 of the act with respect to accounting and the filing of annual and other reports is one thing, but to require it to file tariffs and thereby obligate itself to transport oil products of others in common-carrier service, to the exclusion of its own, is

something entirely different. The Supreme Court, in sustaining our valuation orders, it seems to me, recognized that there might be some such distinction. Concerning appellant's (Champlin's) contention that our valuation orders convert a private pipe line into a public utility and require a private carrier to become a common carrier, the Court said "But our conclusion rests on no such basis and affords no such implication." And after pointing out that our valuation orders only required Champlin to furnish certain information as to facilities being used in interstate marketing of its products, the Court held that, "The Commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier." *Champlin Refining Co.* v. *United States,* 329 U. S. 29, 34-35.

I cannot agree with the conclusion in this report that the filing of tariffs by Champlin will not be a hardship, or deprive it of the free use of its pipeline facilities in the conduct of its refining business. On the contrary, it is reasonable to assume that Champlin will be called upon to perform the transportation service held out under its duly published tariffs; otherwise, it seems we are requiring a vain act for which there is no justification in law or sound reason.

The publishing of tariffs pursuant to the finding in this report will place upon Champlin the legal obligation to perform the transportation service specified in those tariffs, and to conform to the requirements of section 1 (4) of the act which provides that "It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates" et cetera.

The purpose of the amendment in 1906 was to protect small independent producers from mo-

nopoly power. This report construes that amendment so as to convert into a common carrier the pipe line wholly owned and completely utilized by a relatively small independent company, though the company is wholly dependent upon such facility exclusively owned and used in the conduct of its refining business. This ultra literal construction regardless of differing conditions and circumstances might well have the effect of destroying small independent companies instead of affording them the protection intended by the amendment.

MITCHELL, *Commissioner,* dissenting:

I cannot agree that Champlin is a common carrier by pipe line subject to our jurisdiction. That all pipe lines crossing State lines are subject to the Interstate Commerce Act is negatived by *Pipe Line Cases,* 234 U. S. 548, where with respect to the Uncle Sam Oil Company, the Supreme Court expressly holds that private pipe-line transportation is lawful notwithstanding the terms of the Interstate Commerce Act.

The facts are not in dispute. Champlin has never sold products from the refinery at Enid. The products are sold from its three storage terminals. The products are never consigned to any particular customer. Champlin is the sole owner of the products in storage which have come to rest as a mere incident of Champlin's private business. The change in pricing method removes one of the grounds on which the Supreme Court found that Champlin came under the act for the purpose of valuation reports. It is to be remembered that Champlin supplies less than 2 per cent of the gasoline consumed in the marketing area.

Section 19a provides only that we shall report the value of all property owned or used by every common carrier subject to the provisions of the act. It is necessary to go to section 1 (1) (b) and section 1 (3) to determine when an enterprise is

subject to the act. Section 1 does not contemplate that a pipe line carrying only its own products as an incident to its principal business and not offering its services to the public is engaged in the transportation of oil as a common carrier. Section 1 (3) (a) in stating that the term common carrier includes all pipe-line companies obviously means all of those pipe-line companies engaged in the interstate transportation of oil for the public. It could not include pipe lines wholly within a State unless such pipe lines engaged in interstate transportation for all who offered shipments.

To require that Champlin publish and file tariffs with us can only be for one purpose, viz: to make Champlin's pipe lines available for use by all shippers. If that is not the purpose, then the requirement that tariffs be filed is an idle and futile gesture. If, following the filing of tariffs, Champlin's pipe line is used by other shippers, then to the extent of that use we are depriving Champlin of the use of its own pipe line for its own products.

The majority find that the entire capacity of the pipe line is used in transporting the products of Champlin's refinery. If the pipe line is not used by others, Champlin will be the carrier and the sole shipper. Champlin will tender shipments to itself; it will bill itself; it will give notice of arrival at destination to itself; and it will pay itself. It was never intended that an interpretation of the act should bring about such a situation.

Commissioners Patterson and Johnson did not participate in the disposition of this proceeding.

Endorsed: Filed in District Court October 25, 1950.

Harry O. Glasser and Dan Moody (Nathan Scarritt and E. S. Champlin were on the brief) for plaintiff.

William D. McFarlane, Special Asst. to the Atty. General, (Frederick R. Hanlon, Special

Atty., Herbert A. Bergson, Asst. Atty General, James E. Kilday, Special Asst. to the Atty. General, Robert E. Shelton, United States Atty., were on the brief) for the United States of America.

S. R. Howell, Atty., Interstate Commerce Commission, (Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission and H. L. Underwood, Asst. Chief Counsel, Interstate Commerce Commission were on the brief) for intervening defendant.

Before PHILLIPS and MURRAH, Circuit Judges, and VAUGHT, District Judge.

PHILLIPS, Circuit Judge.

Champlin Refining Company[5] brought this action seeking a judgment enjoining the Interstate Commerce Commission[6] from enforcing an order requiring Champlin "to file with the * * * Commission annual, periodical, or special reports as required by the provisions of paragraphs (1) and (2) of Section 20 of the Interstate Commerce Act[7] * * * and the orders and regulations of the * * * Commission made pursuant thereto"; "to institute and henceforth maintain a uniform system of accounts applicable to pipe lines, as required by the provisions of paragraphs (3), (4) and (8) of Section 20 of the Interstate Commerce Act * * * and the orders and regulations of the * * * Commission made pursuant thereto," and "to publish and file tariff schedules showing the rates and charges for interstate transportation of refined petroleum products between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been estab-

[5] Hereinafter called Champlin.

[6] Hereinafter called the Commission.

[7] 49 USCA § 20.

lished, upon notice to" the Commission and the general public "by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act," and adjudging such orders to be invalid.

Champlin owns and operates a pipe line extending from its refinery at Enid, Oklahoma, to storage tanks owned by it at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The only openings in the pipe line are at the refinery at Enid and at such storage tanks. Such pipe line has no connection with any other pipe line. Champlin could not transport the petroleum products of others without constructing facilities for receiving such products into its line and without constructing terminal facilities for delivering such products at the end of their transportation. Champlin uses the pipe line exclusively for the moving of gasoline, kerosene and tractor fuel from its refinery at Enid to such storage tanks. Such petroleum products so moved are discharged from its pipe line into such storage tanks where, at times and before the sale thereof, certain blending of the products is done, which necessarily has an effect on their quality. At the three terminals Champlin maintains loading racks designed to load products from the storage tanks into railroad tanks cars and tank trucks. Champlin is the manufacturer and sole owner of all of the products moved through its pipe line. It has never transported products belonging to any other person, firm or corporation. It has never proffered the service of its pipe line to any other person, firm or corporation, exchanged with any other person, firm or corporation any petroleum products which have moved through its pipe line, filed any tariffs or rates with the Commission, or with any state regulatory agency, or assumed or exercised the right of eminent domain in connection with its pipe line.

Champlin markets the products that move through its pipe line only after they have come to rest in storage tanks at one of the three terminals, and in certain instances after additional processing. All products which have been shipped through the pipe line belong to Champlin and it retains title thereto until sales are made from its bulk storage tanks at one of the terminals. In no instance has it made a sale on condition that the product sold would be shipped by means of the pipe line.

A prior action brought by Champlin (Champlin Refining Co. v. United States et al., 59 F. Supp. 978, 329 U. S. 29) involved an order of the Commission requiring Champlin to file under the provisions of § 19a of the Interstate Commerce Act, inventory, schedules, maps and charts of its pipe line property, in compliance with Commission Valuation Orders Nos. 26 and 27.

At the time of the trial of the prior case, there was involved in Champlin's marketing system a factor, which for convenience was referred to as the "differential," being a sum added to the sale price of products F.O.B. the Enid refinery.[8] The amount to be so added was determined by competitive prices in the marketing areas, and was a device for meeting competitors' prices. The differential was a sum, which when added to the sale price at the Enid refiner, resulted in a sale price f.o.b. the pipe line terminals, that enabled the purchaser to move the products from the storage tanks, where he made his purchase, to his place of business by means of his own choice, with a total resulting cost to him that did not exceed the sum for which he could have bought such products from Champlin's competitors, delivered to the purchaser's place of business. Some-

[8] The price f.o.b. Enid is normally based upon the Chicago Journal of Commerce "group 3" (Oklahoma) prices as shown in the issue of the Thursday preceding the date of shipment.

times, but not always, depending upon competitive prices, the differential would equal or approximate the difference between the cost of the through freight haul from the Enid refinery to the purchaser's place of business, less the cost of the local freight haul from the storage tanks to the purchaser's place of business. However, the differential varied constantly, depending upon the price at which competitors in the market territory were selling like products. Competitive prices, and not the cost of transportation or freight charges, determined the amount of differential. Any relation between the differential and the cost of transportation was incidental, because the controlling factor in arriving at the amount of the differential was the price at which the stronger marketers in the market territory offered their products for sale.

On May 10, 1948, and before the promulgation of the orders here involved, Champlin abandoned the differential method of pricing. In lieu of that method Champlin has adopted the policy of posting prices at each of its terminals. Where competitive marketing conditions require it, Champlin makes allowances from the posted prices so that purchasers in such instances buy below the posted prices and thus Champlin meets the competitive market prices in the sale of its products. These allowances range from 1/8 to 1/2 cent per gallon, which are substantial amounts, and enable Champlin to put its products on the market in competition with other stronger marketers in the market area. On May 10, 1948, the change in pricing method reflected net increases or decreases of from 1/2 cent to 1/8 cent per gallon at more than 70 per cent of the destinations served by Champlin out of its Superior and Rock Rapids terminals.

The capacity of Champlin's pipe line is 9,800 barrels per day, as against common carrier pipe line capacity of 172,800 barrels per day, available

to refineries in Oklahoma and Kansas. Champlin's pipe line capacity is approximately five per cent of the total products pipe line capacity serving Superior and seven per cent of the total pipe line capacity serving Rock Rapids. It is the smallest pipe line serving the territory. Only 1.98 per cent of all the gasoline consumed in the area served by Champlin's pipe line is moved through its pipe line and sold from its terminal storage facilities. Champlin occupies such a relatively minor place in the gasoline market in the middle west that it is in no position to control the price of gasoline, kerosene, or tractor fuel, either by raising or lowering the price thereof. It is in no position to support price advances against its competitors or survive price cutting of its competitors.

By the Act of June 29, 1906 (the Hepburn Act) 34 Stat. 584, Congress first acted to regulate interstate transportation of oil by pipe lines. The part of that Act here material, reads as follows:

> "Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States, or the District of Columbia, * * *"

By the Act of February 28, 1920, 41 Stat. 456, 474, amending the Interstate Commerce Act §1 of that Act was amended to read, in part, as follows:

> "Sec. 400. * * *
>
> "(1) That the provisions of this Act shall apply to common carriers engaged in— * * *
>
> "(b) The transportation of oil or other commodity, except water and except natural or artifical gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * *
>
> "(3) The term 'common carrier' as used in this Act shall include all pipe line companies; telegraph, telephone, and cable companies; operating by wire or wireless; express companies; sleeping car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire."

By the enactment of the Communications Act of 1934, 48 Stat. 1064, 1102, the provisions of the Interstate Commerce Act, as amended, in so far as they related to communications by wire or wireless, or to telegraph, telephone or cable companies operating by wire or wireless, except certain provisions not here material, were repealed, so that the phrase, "telegraph, telephone, and cable companies operating by wire or wireless," was eliminated from the definition of common carrier in the Interstate Commerce Act.

The question presented is whether Champlin is so engaged in the transportation of petroleum products by pipe line within the meaning of §1 of the Interstate Commerce Act, as amended by §400 of the Transportation Act of 1920, that the Commission may require it to transport the petroleum products of others as a common carrier for hire. Admittedly, Champlin's operations fall within the literal language of such § 1, but to construe the statute literally would result in far-reaching con-

sequences, and in our judgment would raise grave constitutional questions.

In the Pipe Line Cases, 234 U. S. 548, the facts were these: Standard Oil Company and its affiliates controlled the only practical means of oil transportation in the area lying between California and the Atlantic seaboard and carried much the greater part of the oil transported in such area. They made use of their monopoly of such means of transportation by refusing to carry oil through their pipe lines unless the producers of the oil would first sell their oil to them at prices dictated by Standard. They carried "everybody's oil", but imposed as a condition to the transportation that the oil be sold before it would be received into their pipe lines.[9] It was that situation which prompted Congress to enact that part of §1 of the Hepburn Act, which dealt with the transportation of oil by pipe lines.[10]

The Supreme Court held that Standard and its affiliates were common carriers of oil in everything but form; that they were common carriers in substance because they purchased and carried all oil offered; that the amendment applied to them; that Congress, under the commerce clause, could require those who are common carriers in substance to become so in form, and that while it did not compel them to continue to carry oil, it required them not to continue to carry oil except as common carriers.[11] In the same decision the Supreme Court held that the Uncle Sam Oil Company, although it operated a pipe line through which it transported its own oil, drawn from its own wells, across a state line to its refinery for processing at the refinery, was beyond the reach

[9] 234 U. S. 558, 559, 560, 561.

[10] Pipe Line Cases, 234 U. S. 548, 558-561; Valvoline Oil Co. v. United States, 308 U. S. 141, 146; 40 Congressional Record 6361, 6365, 7000.

[11] 234 U. S. 560, 561.

of the amendment because it was not engaged in the transportation of oil as a common carrier within the purview of the amendment.

And in Valvoline Oil Co. v. United States, 308 U. S. 141, in distinguishing its operation from that of the Uncle Sam Oil Company, the court said:

> "But that company's (The Uncle Sam Oil Company) pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be tranportation under the Act. Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline."

In the Valvoline case the interpretation of the Hepburn Act of 1906 in the Pipe Line Cases was held to have been carried into the Act, as amended in 1920, despite certain changes in language.

If Champlin, in response to the Commission's order, should publish and file tariff schedules showing its rates and charges for interstate transportation of refined petroleum products between different points on its pipe line, that would constitute an implied invitation to the public to tender petroleum products for transportation by Champlin's pipe line and would convert it from a carrier solely of its own products into a common carrier of products of others, for hire.

The question whether Congress, acting through the Commission, may thus convert a private pipe line into a public utility and require a private carrier to become a public carrier without violating the due process clause of the Fifth Amendment was not involved in Champlin Refining Co. v. United States et al., 329 U. S. 29. The court there said:

> "Appellant further contends that, as so construed, the Act exceeds the commerce power of Congress and violates the due proc-

ess clause of the Fifth Amendment because, it is argued, this interpretation converts a private pipe line into a public utility and requires a private carrier to become a common carrier. But our conclusion rests on no such basis and affords no such implication. The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier. This power has yet been invoked only to the extent of requiring Champlin to furnish certain information as to facilities being used in interstate marketing of its products. The commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier."

And in *Valvoline Oil Co.* v. *United States,* 308 U. S. 141, 146, the court said

"Appellant presses its argument beyond the question whether it comes under the Act. If it does, it urges, the Act is in violation of the due process clause in that by the involuntary change of status from private to common carrier its property is taken. It looks upon the various regulatory provisions of the Interstate Commerce Act as inseparable from the valuation provisions of §19A(a) and (e). The losses feared, from present or future legislation other than the valuation provisions, may never occur. The data required by the present order may never be used to fix rates. No such information as to other pipe lines has been so used. Publicity alone may give effective remedy to abuses, if any there be. This legislation was intended to free interstate commerce in oil from practices believed to be detrimental, and in that connection accessibility of valuation information to the Con-

gress is essential. Its separate significance being apparent, we confine ourselves to §19A(a) and (e).

In the prior action the question involved was whether the Commission could require Champlin to furnish certain information under §19a of the Interstate Commerce Act, which the Supreme Court held could be required of a private carrier. Compliance with the order here involved would convert Champlin into a common carrier for hire. The power to regulate a private carrier in interstate commerce is one thing, but the power to compel a private carrier either to cease its operations as such, or to become a common carrier and to carry the goods of others for hire is quite a different thing.

We are of the opinion that Congress did not intend § 1 of the Hepburn Act and §400 of the Transportation Act of 1920 to subject carriers of oil by pipe line, who carry only their own products and who are not, at least, common carriers in substance, to regulations requiring them to transport the products of others as common carriers for hire. Here, Champlin transports its own petroleum products through its pipe line to storage tanks at the three terminal points. It has never transported products belonging to any other person, firm or corporation. It markets its products only after they have come to rest in such storage tanks, and in certain instances after additional processing. It retains title to such products until the sale thereof from its bulk storage tanks at one of the terminals. It has never made a sale on condition that the product sold would be shipped by means of its pipe line. Of course, the products have a greater sale value at the terminal points than they would have f.o.b. the refinery, because if the purchaser bought at the refinery he would have to incur the cost of transportation to his place of busi-

ness and deliveries can be made to the purchaser with greater expedition and convenience from the terminal points. Naturally, the cost of transportation to some extent is reflected in the selling prices at the terminal points, but the selling prices at such points are not the Enid f.o.b. price, plus the cost of transportation. They are determined by the prices in a competitive market and are prices that enable Champlin to sell its products in competition with other marketers of petroleum products. Champlin is not a common carrier, either in fact or in substance.[12]

In the Pipe Line Cases, Standard and its affiliates enjoyed a monopoly and compelled, as a condition of transportation, other producers of oil to sell to them at their prices, but they carried everybody's oil. Here, Champlin enjoys no monopoly, transports its own products, and after they have come to rest in storage tanks at terminal points, sells them, not at prices dictated by it, but at prices compelled by competition in the market. It supplies a very small percentage of the gasoline consumed in the area. Its acts create competition and do not enable it to foster or enjoy a monopoly.

We conclude that Champlin is not in substance a common carrier of petroleum products and may not be required to construct receiving facilities and delivery facilities and carry the petroleum products of others as a common carrier for hire, or cease operation of its pipe line, and that to hold otherwise would be to take its property without due process of law, in violation of the Fifth Amendment.[13]

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[12] Cf. Pennsylvania Railroad Co. v. Public Utilities Commission of Ohio, 298 U. S. 170; Pennsylvania R. Co. v. Pittsburgh, L. & W. R. Co., 6 Cir., 83 F. 2d 861.

[13] Producers Transportation Company v. Railroad Commission of the State of California, 251 U. S. 228, 230, 231.

MURRAH dissenting:

In the former case, 59 Fed. Supp. 978, we held the identical operations of this plaintiff within the jurisdiction of the Interstate Commerce Commission as a statutory "common carrier engaged in the transportation of oil * * * by pipe line" under Section 1 of the Interstate Commerce Act, as amended. We accordingly sustained the jurisdiction of the Commission to require the plaintiff to furnish valuation reports under Section 19(a) of the Act.

Our decision was affirmed in Champlin v. United States, 329 U. S. 29, the Court specifically holding that "Champlin's operation is transportation within the meaning of the Act, and that the statute supports the Commission's order to furnish information."

There is no actual difference in this case and the former, and in my judgment, it should be affirmed on the authority of that case.

If the Commission is authorized to require Champlin to comply with the provisions of Section 19(a) of the Act as a common carrier subject to the Act, I can see no justifiable basis for denying jurisdiction to require compliance with Sections 20 and 6 of the same Act. In either case, jurisdiction of the Commission over Champlin as a common carrier, subject to the provisions of the Act, is an indispensable prerequisite to the exercise of its asserted authority. If it has jurisdiction under one Section of the Act, it assuredly has jurisdiction under the other.

The only suggested distinction between this case and the former is that Champlin has now abandoned the price differentials between F.O.B. refinery and the terminal points. The differentials in the former case were intended to reflect the railroad transportation charges between the refinery and the terminals. But in any event, the prices F.O.B. refinery fluctuated to meet competitive

prices at the terminal. Now Champlin has adopted the more realistic method of posting prices at each terminal, with allowances to meet the competitive market price. The result is no different—in each case the transportation cost is an indispensable factor in the price structure.

There is nothing in the order of the Commission which has the effect of requiring Champlin to convert its private pipe line into a common carrier in fact. Certainly there is nothing in the order requiring Champlin to provide new inlets or outlets, or for that matter, to make any structural or operational changes in its system whatsoever.

Although the importance of this Regulation of the Interstate Commerce Commission may not be manifest on the facts of this record, the asserted authority of the Commission undoubtedly bears a permissible relationship to interstate transportation of oil commodities from point of production to point of consumption.

I would sustain the jurisdiction of the Commission and dismiss the action.

Endorsed: Filed in District Court July 12, 1950.

Findings of Fact

In compliance with Rule 52(a), Rules of Civil Procedure, the Court makes and files the following findings of fact and separately states the controlling conclusions of law in this action.

1. Plaintiff Champlin Refining Company (hereafter called Champlin) is a private corporation, incorporated under the laws of the State of New Mexico. It owns and operates a crude oil refinery located at Enid, Oklahoma, by means of which it reduces crude petroleum to gasoline, kerosene, fuel oil and other products. In connection with its refinery and as a part of its operation, Champlin owns and operates a six inch pipe line extending from its refinery to storage tanks owned by Champ-

hn and located at or near Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa.

2. On June 13, 1949, the Interstate Commerce Commission made an order that Champlin be required "to file with the * * * Commission annually, periodical, or special reports as required by the provisions of paragraphs (1) and (2) of Section 20 of the Interstate Commerce Act * * * and the orders and regulations of the * * * Commission made pursuant thereto"; "to institute and henceforth maintain a uniform system of accounts applicable to pipe lines, as required by the provisions of paragraphs (3), (4) and (8) of Section 20 of the Interstate Commerce Act * * * and the orders and regulations of the * * * Commission made pursuant thereto"; and "to publish and file tariff schedules showing the rates and charges for interstate transportation of refined petroleum products between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established, upon notice to" the Commission and the general public "by not less than 30 days' filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act."

This order was directed against Champlin in the operation of the above mentioned pipe line and this suit was brought to enjoin the Interstate Commerce Commission from enforcing the above described orders and for an adjudication that said orders are invalid.

3. Champlin uses the above described pipe line exclusively to move its gasoline, kerosene, tractor fuel and burning oil from its refinery at Enid to its storage tanks at Hutchinson, Superior and Rock Rapids. The movement is an incident to the manufacture or refining of such products.

The products so moved are discharged from the

pipe line into Champlin's said storage tanks. Champlin has always done some blending and treating of such products, after the same come to rest in such storage tanks, which necessarily has an effect on their quality. At the time of the trial, Champlin was constructing Ethyl plants at or near the Superior and Rock Rapids storage tanks for use in further treating and preparing for sale gasoline stored at those terminals.

4. At each of the three terminals Champlin maintains loading racks which are used by Champlin to make delivery of products from such storage tanks to purchasers.

5. Champlin uses the entire capacity of its pipe line on a full time basis in moving the products of its refinery to storage. The pipe line is what is known in the industry as a products line and is a plant facility.

6. Champlin is the manufacturer and sole owner of all of the products moved through its pipe line. The bulk of the products of Champlin's refinery is moved by means of this private pipe line to the above described storage facilities at the three points mentioned. Champlin uses the pipe line exclusively for the movement of its own products; it has never moved products belonging to any other person, firm or corporation, or moved products for any other person, firm or corporation, and it has never proffered the service of its line to any other person, firm or corporation.

7. Champlin has never exchanged products moved through its pipe line for products of any other manufacturer or marketer of petroleum products, or for any other commodity of any other person.

8. Champlin has never filed any tariff schedules or rates with the Interstate Commerce Commission or with any state regulatory agency, or assumed or exercised the right of eminent domain in connection with its pipe line.

9. Champlin markets the products that have been moved through its pipe line only after they have come to rest in storage tanks at the three named places and in instances of some products only after there has been an additional processing.

10. Champlin is at all times the sole owner of all products in its line and in its storage tanks at Hutchinson, Superior and Rock Rapids; and Champlin continues as such owner until the products are sold and deliverd to purchasers from the storage tanks through Champlin's loading facilities.

11. All products which have been moved by means of the pipe line were manufactured by Champlin and belonged to Champlin, and Champlin in all instances retained title thereto, until sales were later made from the bulk storage tanks in which the products had come to rest after the pipe line movement. In no instance has Champlin made a sale on the condition that the products sold would be moved by means of the pipe line or contracted for the use of the pipe line as a means of making delivery of any petroleum products. At no time have any products been placed in the line consigned to or destined for any particular purchaser.

12. Champlin transports through its pipe line to its storage tanks at Hutchinson, Superior and Rock Rapids, substantially all of the products of its refinery at Enid and sells these products from its storage tanks at said places. Champlin uses the capacity of this pipe line in moving these products to its marketing territory in and around Hutchinson, Superior and Rock Rapids, and the pipe line constitutes the only means by which Champlin can move its products to its said marketing territory on an equal marketing basis with its larger and more powerful competitors. If Champlin were compelled to share its pipe line with its competitors, the result would be to deny

to Champlin access to a market upon which Champlin's continuing in business depends.

13. Champlin's pipe line has no connection with any other pipe line, and there is no point at which any petroleum product can be put into the line other than at the Enid refinery; and there is no point at which any product can be taken out of the line except at the storage tanks at Hutchinson, Superior and Rock Rapids. It would require the construction of additional facilities to enable Champlin to take into its pipe line the products of any other person.

14. Delivery of the products to purchasers at the three terminals is made at the storage tanks by means of loading racks and in no instance has any delivery of products been made directly from the pipe line.

15. None of the products moved through Champlin's pipe line has ever been acquired by Champlin by purchase from any other person, firm or corporation.

16. For some years prior to 1935, the business of Champlin showed a steady decline because of the construction of refineries in areas near Champlin's markets, and because of the movement of petroleum products into those areas by means of products pipe lines, barge lines and transport trucks. To enable Champlin to compete with others in marketing of its products, it construced the pipe line. Use of the pipe line in moving its products to market is necessary to enable Champlin to hold its position in the market which it serves, and to survive as a competitor in the market.

17. At the time of the trial of the prior case (*Champlin Refining Company vs. United States et al.*, 59 Fed. Supp. 978, 329 U. S. 29), there was involved in Champlin's marketing system a factor which for convenience was referred to as the "differential", being a sum added to the sale price of products f.o.b. the Enid refinery. The amount

to be so added was determined by competitive prices in the marketing areas and was a device for meeting competitors' prices. The differential was a sum, which when added to the sale price at the Enid refinery, resulted in a sale price f.o.b. the pipe line terminals, that enabled the purchaser to move the products from the storage tanks, where he made his purchase, to his place of business by means of his own choice, with a total resulting cost to him that did not exceed the sum for which he could have bought such products from Champlin's competitors, delivered to the purchaser's place of business. Sometimes, but not always, depending upon competitive prices, the differential would equal or approximate the difference between the cost of the through freight haul from the Enid Refinery to the purchaser's place of business, less the cost of the local freight haul from the storage tanks to the purchaser's place of business. However, the differential varied constantly, depending upon the price at which competitors in the market territory were selling like products. Competitive prices, and not the cost of transportation or freight charges, determined the amount of differential. Any relation between the differential and the cost of transportation was incidental, because the controlling factor in arriving at the amount of differential was the price at which the stronger marketers in the market territory offered their products for sale. On May 10, 1948, (before the promulgation of the order here involved) Champlin abandoned the differential method of pricing. In lieu of that method Champlin has adopted the policy of posting prices at each of its terminals. Where competitive marketing conditions require it, Champlin makes allowances from the posted prices so that purchasers in such instances buy below the posted prices and thus Champlin meets the competitive market prices in the sale of its products. The

allowances range from ⅛th cent to 1⅛th cents per gallon.

The allowance enables Champlin to put its products on the market in competition with other stronger marketers in the area.

On May 10, 1948, the change in pricing method from "differential" to posted pricing reflected net increases or decreases of from ⅛ cent to ½ cent per gallon, at more than 70 per cent of the destinations served by Champlin out of its storage tanks at Superior and Rock Rapids. A change of ⅛ cent per gallon, or more, is recognized in the industry as substantial.

18. Competitive prices in the area are the sole basis for Champlin's prices.

19. No pipe line transportation charge is made either directly or indirectly to any purchaser of Champlin's products. No charge of any kind for transportation is stated in any invoice and no provision for transportation charge is provided in any contract made by Champlin for the sale of its products. Champlin does not change its price structure because of increase or decrease in cost of operating its products pipe line.

20. No refiner of petroleum products other than Champlin is dependent on the Champlin line as an outlet to the markets. Common carrier pipe line transportation is available to any other refiner in this area desiring such service. The capacity of Champlin's pipe line is 9800 barrels per day, as against common carrier pipe line capacity of 172,800 barrels per day available to refiners in Oklahoma and Kansas. Champlin pipe line capacity is only approximately 5 per cent of the total products pipe line capacity serving Superior; and only 7 per cent of the total products pipe line capacity serving Rock Rapids. It is the smallest pipe line serving the territory.

21. No purchaser of refined products is dependent upon the Champlin pipe line as a source of

supply. There are 86 wholesale outlets in the trade territory served by Champlin, distributing the products of 28 refineries. Every purchaser or prospective purchaser of Champlin products in this trade territory has available to him the products of these many marketers that are competing with Champlin in the sale of petroleum products. Purchasers of Champlin products buy in a competitive market and are free to sell at prices over which Champlin does not have any control. For the six months period immediately prior to the institution of the proceedings by the Commission which resulted in this action, only 1.98% of all of the gasoline consumed in the area served by the Champlin pipe line was moved through its pipe line and sold from its storage facilities.

22. If Champlin were forced to open its line to the public, its competitors could make tenders to the extent that Champlin would be deprived of any use of its pipe line, and thereby of its means of access to the market upon which Champlin depends. Twenty-three refineries (having a combined refining capacity of 365,000 barrels of crude oil per day) make deliveries of petroleum products into Champlin's trade territory through two common carrier pipe lines, one of which with more than 4 times the capacity of the Champlin line, crosses the Champlin line near Hutchinson, Kansas. Three of these refiners market petroleum products in Southwest Nebraska in quantities equalling more than 27% of the Champlin pipe line capacity in that area. These three companies could use a substantial part of Champlin's pipe line capacity and the additional 20 refiners above referred to could make tenders in excess of the total capacity of the Champlin line.

23. Champlin is what is known in the industry as an independent company. It is a small company in comparison with companies with which it competes in the area reached by its pipe line. It oc-

cupies such a relatively minor place in the gasoline market in the middle west that it is in no position to control the price of gasoline, kerosene, tractor fuel or burning oil, either by raising or lowering the price thereof; it is in no position to support price advances by its competitors or to survive price cutting by its competitors. Champlin does not have a monopoly or any power to establish a monopoly either in the transportation of petroleum products into the trade territory or in the sale of petroleum products therein. Champlin's acts create competition.

24. Champlin is not in fact a common carrier.

For the court

ORIE L. PHILLIPS,
Judge, the United States Court of Appeals, the Tenth Circuit.

EDGAR S. VAUGHT,
Judge, the United States District Court, the Western District of Oklahoma.

Aug. 28, 1950.

Endorsed: Filed in District Court August 28, 1950.

CONCLUSIONS OF LAW

1. Congress did not intend by Section 1 of the Hepburn Act, as amended by Section 400 of the Transportation Act of 1920 (41 Stat. 474) to subject carriers of oil by pipe line, who carry only their own products and are not common carriers either in fact or in substance, to regulations requiring them to transport the products of others as common carriers for hire.

2. Champlin is not a common carrier, either in fact or in substance.

3. Champlin does not enjoy a monopoly in the transportation of the products of crude petroleum

into the areas reached by its pipe line; or a monopoly in the sale of petroleum products in those areas.

4. Champlin is not so engaged in the transportation of petroleum products by pipe line within the meaning of Section 1 of the Interstate Commerce Act, as amended by Section 400 of the Transportation Act of 1920 (41 Stat. 474), that the Commission may require it to transport petroleum products for others as a common carrier for hire.

5. Although Champlin's operations may fall within the literal language of Section 1 of the Interstate Commerce Act, as amended by Section 400 of the Transportation Act of 1920 (41 Stat. 474), to construe the statute literally and to apply it to Champlin's pipe line would have the result to force Champlin, against its will, to devote its property, heretofore used only for its private purposes, to a public use.

6. If Champlin were required to file and publish schedules showing rates and charges for interstate transportation of petroleum products as directed by the order of the Interstate Commerce Commission, the filing of such schedules would constitute an offer on the part of Champlin to the public to transport through the facilities of its now private pipe line the commodities of other persons, and an implied invitation to the public to tender petroleum products for transportation by Champlin through its pipe line; and to require Champlin to file such schedules would force Champlin to convert its pipe line operations from that of a carrier solely of Champlin's own products, into that of a common carrier of products of others for hire.

7. The Order of the Commission is not supported by either the evidence before the Commission, nor by the law.

8. Compliance with the order here involved would convert Champlin into a common carrier for hire.

9. Champlin is not, in substance, a common carrier of petroleum products; and may not be required by order of the Commission to construct receiving facilities and delivering facilities, and to carry the petroleum products of others as a common carrier for hire, or cease operation of its pipe line.

10. To enforce the order of the Interstate Commerce Commission requiring Champlin to file and publish schedules showing rates and charges for interstate transportation of refined petroleum products, would be to violate the Fifth Amendment to the Constitution of the United States.

For the Court

ORIE L. PHILLIPS,
Judge, the United States Court of Appeals, the Tenth Circuit.

EDGAR S. VAUGHT,
Judge, the United States District Court, the Western District of Oklahoma.

Aug. 28, 1950.

Endorsed: Filed in District Court August 28, 1950.

DECREE

The above case came on for hearing on the 19th day of November, 1949, whereupon came the parties by their respective counsel and announced ready for trial; and, the pleadings, evidence and argument of counsel having been submitted, the Court took the cause under advisement, and upon due consideration, on July 10, 1950, announced its decision in favor of Plaintiff and against Defendant and Intervener:

IT IS NOW ORDERED, ADJUDGED and DECREED that the order of the Interstate Commerce Commission entered on the 13th day of June, 1949, in Cause No. 29,912, *Champlin Refining Company Accounts and*

Reports, and in Cause No. 29,912 (Sub.-No. 1) *Champlin Refining Company Tariffs,* copy of which order is attached to Plaintiff's complaint, is invalid and should not be enforced against Plaintiff; and the Interstate Commerce Commission, its servants, agents and employees are perpetually enjoined from enforcing or attempting to enforce said order against Plaintiff in the operation of its petroleum products pipe line, and the cross-complaint of Intervener Interstate Commerce Commission is dismissed. All costs accrued in this action are taxed against the Defendants.

ENTERED this the 28th day of August, 1950.

For the Court

ORIE L. PHILLIPS,
Judge, the United States Court of Appeals, the Tenth Circuit.

EDGAR S. VAUGHT,
Judge, the United States District Court, the Western District of Oklahoma.

Endorsed: Filed in District Court August 28, 1950.

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No. 433

In the Supreme Court of the United States

OCTOBER TERM, 1950

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHAMPLIN REFINING COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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OPINIONS BELOW

The opinion of the District Court for the Western District of Oklahoma (R. 32) is not yet reported. The report of the Interstate Commerce Commission (R. 6) is found in 274 I. C. C. 409.

JURISDICTION

The final judgment of the three-judge district court was entered on August 28, 1950 (R. 49). The petition for appeal was presented and allowed on October 25, 1950 (R. 50, 51). The jurisdiction

of this Court is conferred by 28 U. S. C. 1253, 2101 (e), and 2325. Probable jurisdiction was noted on January 2, 1951 (R. 555).

STATUTE INVOLVED

The relevant provisions of the Interstate Commerce Act are set forth in Appendix A, *infra* pp. 45–46.

QUESTIONS PRESENTED

In *Champlin Refining Co.* v. *United States*, 329 U. S. 29, this Court held that the Champlin Company is a "common carrier" engaged in "transportation" of oil, within the meaning of Section 1 of the Interstate Commerce Act and that it was, as such a carrier, subject to the valuation requirements of Section 19a of the Act. In the present proceeding the Interstate Commerce Commission found that there had been no change in Champlin's common carrier status under the Act, and it issued an order directing Champlin to file schedules of its transportation rates and charges, as required by Section 6 of the Act, and to file annual and other reports with the Commission and to establish and maintain a uniform system of accounts, as required by Section 20 of the Act. The court below set aside this order upon the ground that Champlin was not, at least for the purposes of these sections, within the class of carriers regulated by the Act. The court also held that application of Section 6 to Champlin

would be a taking of its property without due process in violation of the Fifth Amendment.

The questions presented by the appeal are:

1. Whether Champlin is a "common carrier" gaged in "transportation" by pipe line, within the meaning of Section 1 of the Interstate Commerce Act, and therefore subject to the requirements of Sections 6 and 20 of the Act.

2. Whether the order of the Commission requiring Champlin to file schedules of its charges for transporting refined petroleum products in its pipe line takes its property without due process of law in violation of the Fifth Amendment.

STATEMENT

The Interstate Commerce Commission instituted proceedings early in 1948 to determine whether the appellee (referred to herein as Champlin) is subject to Sections 6 and 20 of the Interstate Commerce Act (R. 63, 70). The proceedings resulted from Champlin's refusal to comply with these sections notwithstanding the holding in *Champlin Refining Co.* v. *United States,* 329 U. S. 29, which is sometimes called the valuation proceeding, that Champlin is, under the definitions of Section 1, a common carrier subject to the provisions of part I of the Act (R. 64–66; Comm. Exs. 1–3, R. 172–176).

After the matter had been submitted to the full Commission on Champlin's exceptions to the proposed examiner's report (R. 7), the Commission

found that the "controlling facts" relating to Champlin's pipe-line operations, including the changed method adopted for quoting prices for products transported through its pipe line, "are the same now as they were" at the time of the valuation proceeding (R. 14), and that Champlin was therefore subject to Sections 6 and 20 of the Act. With respect to Champlin's contention that to require it to comply with these sections "would be tantamount to taking private property for public use in contravention of the fifth amendment," the Commission said that it did not appear that the filing of tariffs and of annual and other reports would be a hardship to Champlin or would deprive it of any traffic or of use of its property free from interference from its competitors (R. 15).[1]

The order entered by the Commission on June 13, 1949, directed Champlin to file with the Commission "annual, periodical, or special reports;" and to institute and maintain "a uniform system of accounts applicable to pipe lines," as required by paragraphs (1)–(4) of Section 20 of the Act and the Commission's orders and regulations thereunder; and to publish and file "tariff sched-

[1] One Commissioner dissented from the finding that Champlin is a common carrier by pipe line subject to the Commission's jurisdiction (R. 17–18) and another Commissioner dissented from the determination that Champlin is subject to the requirements as to filing tariffs imposed by Section 6 (R. 15–17). Two Commissioners did not participate in disposition of the proceeding (R. 18).

ules showing the rates and charges for interstate transportation of refined petroleum products" between points on its own pipe line, and to points on the route of any railroad, pipe-line or water carrier as to which there had been established a "through route and joint rate," as prescribed by Section 6 of the Act (R. 20–21). By its terms, the order was to become effective September 29, 1949 (R. 21).

Shortly before the effective date Champlin brought the present action in the court below seeking to enjoin and set aside the Commission's order (R. 1) and, as provided in 28 U. S. C. 2321, 2325, the case was heard by a three-judge district court. The majority of the court held that Section 1 does not apply to pipe lines which transport only their own products and which are not "common carriers in substance," that Champlin is not in substance a common carrier, and is not subject to Sections 6 and 20 of the Act (R. 39, 40). The court further held that to apply Section 6 of the Act to Champlin would be to take its property without due process in contravention of the Fifth Amendment (R. 36, 40). Judge Murrah, dissenting, was of the opinion that there was no significant distinction between the valuation case and the present one and that this Court's prior decision in 329 U. S. was controlling as to the validity of the Commission's order (R. 40–41).

On this appeal from the district court's judgment enjoining enforcement of the Commission's order, the following facts are believed pertinent:

Champlin is a fully integrated oil company engaged in the production and purchase of crude oil, transportation of crude oil from producing fields to its refinery, conversion of crude into refined products, and transportation and sale of refined products (R. 8–9). It owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma (R. 9) and its refinery at Enid, Oklahoma, which has a daily capacity of 18,000 barrels of crude (R. 12), is the fifth largest refinery in the State.[2]

Champlin has never been able to obtain more than 45% of its crude requirements from its own producing wells (R. 87–88). At the time of the hearing before the Commission in July 1948 its own wells were supplying about 6,000 barrels of crude oil per day and Champlin was unable to purchase the full additional 12,000 barrels required for capacity operation of its refinery (R. 89).

In order to reduce the cost of transporting refined products to purchasers in states north

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[2] The four Oklahoma refineries having greater capacity are (Ex. 3A, R. 484–488):

Company	Location	Capacity
Mid-Continent Pet. Co.	Tulsa	34,000
Continental Oil Co.	Ponca City	26,000
Sunray Oil Co.	Duncan	20,000
Texas Co.	Tulsa	20,000

of Oklahoma, Champlin constructed, and now owns and operates, a six-inch pipe line running from Enid through Hutchinson, Kansas, and Superior, Nebraska, to Rock Rapids, Iowa (R. 90, 112). The line from Enid to Superior, a distance of 256 miles, was completed in 1935, and the 260-mile extension to Rock Rapids was completed in 1940 (R. 8). Champlin also has substantial storage facilities at each of the three pipe-line terminals (R. 8–9). At the time of the Commission hearing its total investment in its products pipe line and appurtenant facilities was approximately $3,230,000 (R. 8).

Champlin markets about one-third of its refined products in Oklahoma and Texas (R. 90). The remaining two-thirds are transported by its pipe line for sale to purchasers located in states north of Oklahoma (*ibid.*). Of the total deliveries from the pipe-line terminals, approximately 2% are from Hutchinson, 35% from Superior, and 63% from Rock Rapids.[5]

Champlin has never carried any but its own products in its pipe line and its line does not connect with any other pipe line (R. 14–15). Pipe lines carrying refined petroleum products, which are frequently called products pipe lines, are

[5] The above percentages are computed from the figures for deliveries from the pipe-line terminals during the last six months of 1947, as shown in Exhibit 12 (R. 502). This is the only information in the record as to deliveries from the respective terminals.

sometimes utilized for common carriage, but many of them, as in the case of Champlin, have been used only to transport products of the pipe-line owner.

Exhibit 3 (Ex. Vol. 2) shows the products pipe lines in the area from our southern to our northern borders and roughly bounded to the west by the Pacific Mountains and to the east by the Mississippi River. The exhibit shows that Champlin's Rock Rapids terminal is adjacent to a common carrier pipe line (that of Great Lakes), but that Superior, the only other terminal which is a substantial market outlet (*supra*, p. 7), is distant from any common carrier line. In the light of this situation, it is not surprising that Champlin's terminal price for a gallon of gasoline was at the time of the hearing 1/8¢ higher at Superior than its price at Rock Rapids, although the latter is 260 miles further from its refinery (R. 107).

Both companies of major size and relatively small concerns have products pipe lines that have not been used for common carriage. One such line is that of Standard Oil (Indiana) running from Chicago, through Minneapolis, to Moorhead, Minnesota. The same company has a line running from near Kansas City to Sioux Falls, South Dakota, with a branch to Des Moines, Iowa. Other "private" lines include Socony's line running from southeastern Kansas to Sioux Falls, with a branch to Kansas City, Magnolia's line

from Dallas to Oklahoma City, Shell's line running east from near St. Louis, Sinclair's line from Corpus Christi, Texas, and Texas' line running northeasterly from San Antonio, Texas. As to relatively small companies, the Derby Oil Co. has a line in Kansas from McPherson to Wichita and the National Cooperative Association from McPherson to Council Bluffs, Iowa. (Ex. 3, Ex. Vol. 2.)

The jobbers who purchase products transported through Champlin's pipe line provide their own transportation (by truck or rail) to their bulk depots (R. 107). The jobbers' places of business ordinarily are not at the terminals, and Champlin fixes what amounts to a destination price by making a reduction from the terminal price designated "allowance to meet competitive prices" (R. 108; Ex. 18, R. 523; Ex. 19, R. 528). This reduction or allowance is made so that the delivered cost of the gasoline will be as low as the jobber's delivered cost on purchases made from competitors of Champlin (R. 108–109).

The foregoing basis of quoting prices, i. e., employing a terminal price with a deduction therefrom to make the price on each sale conform to the market price at the purchaser's place of busi ss (the destination of the particular sale), was put into effect on May 10, 1948, several months after this proceeding started (R. 120–121). It represents a change in form from the basis of quoting prices in effect at the time of the

valuation proceeding. Under the prior method, the spot price (as distinguished from the price of products sold under contract on an annual basis) was computed by taking Champlin's price f. o. b. its Enid refinery and adding thereto a "differential" equal to the amount of the through rail rate from Enid to purchaser's destination minus the charges for local transportation from the applicable pipe-line terminal to destination, which short-haul transportation the purchaser either paid for or provided (R. 9–10, 107).[4] Such "differential," included in the price charged by Champlin, obviously did not represent or purport to represent the cost (or the cost plus a reasonable profit) of the pipe-line transportation from Enid to the applicable pipe-line terminal.

Due to competitive and other conditions, departures from the prices arrived at in accordance with the foregoing formula were substantial and frequent (329 U. S. 29, at p. 34). In the present proceeding a Champlin officer testified that, from the outset of its pipe-line operations, competitive conditions made it impossible to use the differential based upon rail rates in sales to purchasers in most of the places within the marketing area served by its pipe line (R. 120). He further testified that by May 9, 1948, just prior to the change in method of pricing, the actual differen-

[4] For further detail as to the prior pricing basis, see *Champlin Refining Co., Valuation of Pipe Line*, 49 Val. R. 542, 543–544.

tial charged customers differed from the rail-based differential in every place in which Champlin marketed products transported through its pipe line (*ibid.*).[5]

The Interstate Commerce Commission found that under Champlin's present pricing method its terminal price "takes into account the total costs of operating respondent's [Champlin's] facilities, including the pipe line" (R. 10). It further found that the change in pricing method "was a change in name more than in substance, the resulting terminal price, now as under the differential method, generally being the price made necessary by competition and, as such, including the transportation cost or as much of it as was or is permissible under the prevailing competitive conditions" (R. 11).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred—

1. In holding that Champlin Refining Company is not a common carrier by pipe line within the purview of Section 1 of the Interstate Commerce Act.

2. In holding that Champlin is not engaged in "transportation" within the meaning of Section 1 (1) (b) of the Interstate Commerce Act.

3. In holding that Champlin is not required to comply with the provisions of the order of the

[5] See also Exhibit 20, first column and last two columns (R. 537–549).

Interstate Commerce Commission entered on June 13, 1949, directing Champlin to file with the Commission annual, periodical or special reports, and to institute and maintain a uniform system of accounts applicable to pipe lines, as required by Section 20 of the Interstate Commerce Act and the orders and regulations of the Commission thereunder.

4. In holding that Champlin is not required to comply with the provisions of the order of the Commission of June 13, 1949, directing Champlin to publish and file schedules of rates and charges for interstate transportation of refined petroleum products, pursuant to Section 6 of the Interstate Commerce Act.

5. In holding that enforcement of the Commission's order of June 13, 1949, would violate the Fifth Amendment to the Constitution of the United States.

6. In failing to adopt the proposed findings of fact and conclusions of law submitted by the United States and the Interstate Commerce Commission, and in adopting the proposed findings of fact and conclusions of law submitted by Champlin.

7. In holding that the Commission's order of June 13, 1949, is invalid and in perpetually enjoining enforcement of this order.

SUMMARY OF ARGUMENT

I

Sections 6 and 20 of the Interstate Commerce Act apply to common carriers which are subject to the Act. Such common carriers are defined in Section 1, and the sole issue of statutory construction which this case presents is whether Champlin is, under the definitions of Section 1, a common carrier subject to the Act.

1. In *Champlin Refining Co.* v. *United States*, 329 U. S. 29, this Court held that Champlin is a common carrier subject to the provisions of the Interstate Commerce Act. The parties and the significant facts are the same as in the prior case, and there has been no intervening change in controlling legal principles. The doctrine of collateral estoppel therefore bars Champlin from relitigating the issue previously decided.

2. This Court has uniformly held that the definition of the term "common carrier" in Section 1 of the Act includes a pipe-line company, such as Champlin, engaged in transporting only goods of which it is the owner.

3. Under Section 1, a pipe-line company is subject to the Act if it is engaged in the "transportation" of oil by pipe line. In the prior *Champlin* case there was division among the members of the Court as to whether Champlin's pipe-line operations constituted such transportation. This division stemmed from the holding in

the *Pipe Line Cases*, 234 U. S. 548, as to the Uncle Sam Oil Company—that there is not the transportation contemplated by the Act when a pipe line is built and used solely to carry crude oil from the wells of the pipe-line owner to his refinery. The majority in the *Champlin* case held that the holding as to the Uncle Sam Company concerned a pipe line which merely linked one step in production with another and that it would "expand" that holding to apply it to Champlin's pipe line, which was employed to transport products, after manufacturing processes had been completed, for the purpose of sale in interstate markets "at the greatest economic advantage." The later formal change in the method by which Champlin computes sales price clearly does not affect its status as a common carrier under the Act. In this case, as in the prior one, the character of Champlin's pipe-line operations and the competitive advantage it derives in interstate markets from these operations, require the holding that the Act is applicable to it.

II

The district court concluded that the provisions of the Commission's order directing Champlin to file schedules of its charges for transporting products through its pipe line is an implicit requirement that it transport goods for others, and that such a requirement constitutes

a taking of Champlin's property without due process. The Government submits that the due process question, if any, which is before the Court is whether subjecting Champlin to the obligation to carry for others for compensation, under circumstances not now disclosed, is in and of itself violative of due process requirements. The question of any specific injury to Champlin from such required carriage "is too premature and hypothetical to warrant [present] consideration" (329 U. S. at p. 35).

Champlin built its pipe line many years after enactment of the pipe-line provisions of the Interstate Commerce Act. By its voluntary action, therefore, Champlin subjected its pipe line to the limitations on pipe-line operations imposed by the statute. In these circumstances enforcement of the statutory limitations is not violative of due process. This question is set at rest by the decision in the *Pipe Line Cases, supra,* as construed and applied in *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U. S. 125. In the *Pipe Line Cases* this Court said with reference to the constitutionality of the Commission's order to file tariff schedules: "So far as the statute contemplates future pipe lines and prescribes the conditions under which they may be established there can be no doubt that it is valid." In the *Pierce Oil* case this Court, in unanimously upholding the validity of a requirement of carriage for

others imposed under state law upon a subsequently-constructed pipe line, said that the contention that this violated due process "must be pronounced futile to the point of almost being frivolous."

ARGUMENT

I

The Interstate Commerce Act authorizes the order of the Commission directing Champlin to comply with Sections 6 (1) and 20 (1)–(4) of the Act

Introductory

The order of the Interstate Commerce Commission directing Champlin to comply with Sections 6 (1) and 20 (1)–(4) of the Interstate Commerce Act is plainly authorized by the Act if Champlin is a common carrier subject to the provisions of part I of the Act.[6] Section 6 (1) provides: "Every common carrier subject to the provisions of" part I shall file and post schedules of its transportation rates and charges (see *infra*, pp. 45–46). Paragraphs (1)–(4) of Section 20 grant the Commission authority to require "carriers" to

[6] Part I, which includes Sections 1, 6 and 20, embodies the Interstate Commerce Act of February 4, 1887, as it existed prior to its division into parts. Part II, providing for regulation of motor carriers, was added by the Act of August 9, 1935, 49 Stat. 543 (49 U. S. C. 301–327). Part III, providing for regulation of water carriers, was added by the Act of September 18, 1940, 54 Stat. 929 (49 U. S. C. 901–923). Part IV, providing for regulation of freight forwarders, was added by the Act of May 16, 1942, 56 Stat. 284 (49 U. S. C. 1001–1022).

file annual and other reports and to maintain a uniform system of accounts, and paragraph (8) provides that, as used in Section 20, "the term 'carrier' means a common carrier subject to" part I of the Act (see *infra*, p. 46).

Section 1 of the Act defines the term "common carrier" as used in part I and the circumstances under which such a carrier is subject to the provisions of part I. The question of statutory construction presented in this case therefore involves an interpretation of Section 1 of the Act, not of Sections 6 and 20. This Court has considered only the scope and meaning of Section 1 when passing upon the question of application of regulatory provisions of the Interstate Commerce Act to pipe-line companies. *Pipe Line Cases*, 234 U. S. 548, 557–560; *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, 144–146; *Champlin Refining Co.* v. *United States*, 329 U. S. 29, 32–34. See also dissenting opinion in the *Champlin* case, at p. 39.

1. *Champlin is estopped from denying that it is a "common carrier" engaged in "transportation" by pip line, within the meaning of Section 1 of the Interstate Commerce Act*

In *Champlin Refining Company* v. *United States*, 329 U. S. 29, the principal issue determined by the Interstate Commerce Commission, the district court, and this Court was whether or not Champlin, the present appellee, was a "common carrier" engaged in "transportation" by pipe line within the meaning of Section 1 of the

Interstate Commerce Act. 329 U. S. 29, 32–34, 39. The majority and the dissenting Justices of this Court were in agreement that the answer to that question was determinative of whether Section 19a of the Act requiring the submission of information for valuation purposes was applicable to Champlin. Under the well-established doctrine of collateral estoppel, that question may not be relitigated in a subsequent proceeding between the same parties involving the same pipeline operations.

The classic statement of the rule, recently quoted with approval by this Court in *United States* v. *Munsingwear*, 340 U. S. 36, 38, is found in *Southern Pacific Railroad* v. *United States*, 168 U. S. 1, 48–49, where the Court stated:

> The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace

> and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them.

In a more recent case, *Commissioner* v. *Sunnen*, 333 U. S. 591, this Court reexamined the problem, and adverted to the distinction between *res judicata*, where an issue once decided is attempted to be raised in the same cause of action, and collateral estoppel, where the same issue is raised in a different cause of action between the same parties. The Court said (pp. 597–598):

> But where the second action between the same parties is upon a different cause or demand, the principle of *res judicata* is applied much more narrowly. In this situation, the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but "only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." *Cromwell* v. *County of Sac*, *supra*, 353. And see *Russell* v. *Place*, 94 U. S. 606; *Southern Pacific R. Co.* v. *United States*, 168 U. S. 1, 48; *Mercoid Corp.* v. *Mid-Continent Co.*, 320 U. S.

661, 671. Since the cause of action involved in the second proceeding is not swallowed by the judgment in the prior suit, the parties are free to litigate points which were not at issue in the first proceeding, even though such points might have been tendered and decided at that time. But matters which were actually litigated and determined in the first proceeding cannot later be relitigated. Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel. In this sense, *res judicata* is usually and more accurately referred to as estoppel by judgment, or collateral estoppel. See Restatement of the Law of Judgments, §§ 68, 69, 70; Scott, "Collateral Estoppel by Judgment," 56 Harv. L. Rev. 1.

Since the decision of this Court in the *Champlin* case, *supra*, there has been no change in the law and no intervening decision to make the application of the estoppel unjust. The only question, therefore, is whether there has been any change in the factual situation which will justify a reexamination of the issue there decided.

The orders by the Interstate Commerce Commission in the two cases were based on facts developed in hearings before that body, the first being in 1941 and the second in 1948. The Commission specifically found that the controlling facts as to Champlin's pipe-line operations were the same at the time of the second hearing as

they were at the time of the first (R. 14). Indeed, in the second proceeding the parties, by stipulation, incorporated in the record the testimony taken in the first proceeding and certain of the exhibits then introduced.[1]

As the Commission and the court below noted, Champlin has altered its former practice of quoting prices f. o. b. Enid, Oklahoma, and then adding a differential roughly equivalent to rail transportation from Enid to the purchaser's location. Prices are now quoted f. o. b. the pipe-line terminals. The Commission found that this was a change in form rather than in substance since Champlin had always adjusted its prices to meet competitive conditions in local markets (R. 11). As we show later (*infra*, pp. 33–36), the formula by which Champlin computed price at the time of the valuation proceeding was not a controlling factor in the decision of this Court in the prior *Champlin* case that Champlin is a "common carrier" engaged in "transportation" by pipe line within the meaning of Section 1 of the Interstate Commerce Act. Furthermore, Champlin itself argued when it was before this Court in the prior proceeding that use of the differential in computing price had no significance as a charge for transportation and therefore no significance on the

[1] Transcript of Commission proceedings, pp. 510–511, filed as part of the record on this appeal but not printed, which may nevertheless be referred to by any party (R. 552).

ultimate question as to whether Champlin was within the provisions of Section 1.[8] The dissenting Justices in the prior case likewise regarded Champlin's pricing method as irrelevant to this issue. The dissenting opinion states (329 U. S. at p. 39):

> Nor can we see any significant distinction from the *Uncle Sam* case in the practice of Champlin to use frequently the freight rate from Enid to the final destination as a measure of the addition to Enid refinery, f. o. b. price that it will charge at its distributing tanks. This practice is departed from to meet competition. Naturally some transportation cost must be added to the refinery price for deliveries elsewhere. How much it is or how it is calculated does not seem to us to bear upon the question of whether Champlin is "a common carrier engaged in the transportation of oil" within the scope of the act.

It is therefore submitted that since the issue of whether Champlin falls within the provisions of Section 1 of the Act is identical with that in the prior case, since the parties are the same, since the significant facts are identical, and since there has been no intervening change in statutory law or in the judicial construction of it, the judgment in the prior case operates as an estoppel with respect to the issue there decided, that Champlin

[8] See Champlin's reply brief in No. 75, October Term, 1945, pp. 21–25.

is a "common carrier" engaged in "transportation" of oil, within the meaning of Section 1 of the Interstate Commerce Act.

2. Pipe-line companies engaged in transporting only their own goods are within the statutory definition of "common carrier"

Assuming, *arguendo*, that Champlin is not estopped from raising the issue as to the application of the Act to it, nevertheless this Court's prior decision is correct and Champlin is a "common carrier" within the meaning of Section 1 of the Interstate Commerce Act. Section 1 provides that the provisions of part I of the Act "shall apply to common carriers engaged in * * * transportation of oil or other commodity * * * by pipe line" from one state to another. The term "common carrier" as used in part I of the Act is defined to include "all pipe-line companies." See Appendix A, *infra*, p. 45.

There could hardly be words more categorical than "all pipe-line companies." On the face of the statutory definition, it applies to a company such as Champlin operating a pipe line through which it transports only goods of which it is the owner. Consideration of the origin of the statutory definition and of the interpretation placed upon it by this Court further confirms this conclusion.

Pipe-line companies were first brought under the Interstate Commerce Act by the Hepburn Act of June 29, 1906, 34 Stat. 584. That Act

amended Section 1 of the Interstate Commerce Act so that it should read in part as follows:

> That the provisions of this Act shall apply to *any* corporation or *any* person or persons engaged in the transportation of oil or other commodity * * * by means of pipe lines, * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act, * * *. [Italics supplied.]

The *Pipe Line Cases*, 234 U. S. 548, involved the validity of an order of the Interstate Commerce Commission which directed various companies engaged in transporting oil by pipe line to file schedules of their rates and charges for transportation of oil. Each of the companies contesting the order had consistently limited its transportation to oil of which it was the owner. This Court, in upholding the validity of the order as applied to such companies, noted (pp. 558–559) that the very purpose of the amendment to Section 1 was to bring under the requirements of the Act pipe-line companies of this character. And the Court said (p. 560) that to hold that the amendment does not apply to such companies would be to "empty the act" of all practical effect and meaning. With reference to the specific language of the amended section, the Court said (pp. 559–560):

> The provisions of the act are to apply to any person engaged in the transportation

> of oil by means of pipe lines. The words "who shall be considered and held to be common carriers within the meaning and purpose of this act" obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.

The legislative history of the pipe-line amendment, the significant portions of which are set forth in Appendix B, *infra*, pp. 47–49, incontestably establishes that it was the purpose of Congress to bring under the Act pipe-line companies which had not previously assumed the obligation of common carriage.

Section 1 was recast in its present form by the Transportation Act of 1920, but without changing the meaning of the pipe-lines provisions of the Hepburn Act. In *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, the Court held that the statute as it now stands applies, as it had previously, to a pipe-line company engaged in transporting only oil of which it is the owner. The Court said (p. 144) that "all pipe-line companies" are defined as being within the term "common carrier" and that this definition "is decisive" unless limited by the subsequent words bringing within the common-carrier definition "all

persons * * * engaged in such transportation * * * as common carriers for hire." The Court held that the subsequent words did not limit "the generality of the first clause as to pipe-line companies" since this was the construction placed upon similar provisions of the Hepburn Act and since in this respect the Transportation Act of 1920 made "a change in language but * * * none in meaning." 308 U. S. at pp. 145–146.

3. Champlin is engaged in "transportation" by pipe line within the meaning of Section 1 of the act

In *Champlin Refining Co.* v. *United States*, 329 U. S. 29, all members of the Court were in agreement that the statutory definition of common carrier includes a pipe-line company which has carried and offered to carry only its own goods and products. See majority opinion (p. 32), dissenting opinion (p. 37). The issue on which the Court divided was as to whether Champlin's pipe-line operations are "transportation" within the meaning of Section 1 of the Act. That section states that the provisions of part I of the Act shall apply to "common carriers engaged in * * * transportation of oil or other commodity" by pipe line.

The division among members of the Court in the *Champlin* case stemmed from a difference of view concerning the effect of the holding in the *Pipe Line Cases* as to the Uncle Sam Oil Com-

pany. It is therefore appropriate to examine the earlier decision from the standpoint of its relation to the issue before the Court in the *Champlin* case.

In the *Pipe Line Cases* the Court considered the statute and its constitutionality primarily with reference to pipe-line companies which had been parties to the combination declared illegal in *Standard Oil Co.* v. *United States,* 221 U. S. 1. The Court pointed out that the language of the statute clearly applied to companies such as these which, prior to the legislation, had refused to carry oil for others, and that it was this situation which had led Congress to bring pipe-line companies under the Interstate Commerce Act. The Court held that these companies were within the Act and that the Act, as applied to them, was constitutional.

The Court then turned to a consideration of the Uncle Sam Oil Company, which had a pipe line "used for the sole purpose of conducting oil from its own wells to its own refinery," the former being in Oklahoma and the latter in Kansas. The Court, in holding the Commission's order invalid as to this company, said (p. 562):

> It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this

> case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end.

Champlin's situation differs radically from that of the Uncle Sam Company. Champlin's pipe line transports petroleum products from its refinery at Enid, Oklahoma, for sale to purchasers in other states. The line is thus used as a medium of transportation to obtain a better net realization from sale of the transported goods in distant markets than could be obtained by marketing them at the point from which they start or by using other means of transportation to reach the distant markets. This is the very end served by the pipe-line companies held to be subject to the Act in the *Pipe Line Cases*. Congress brought pipe lines under the Act in order to make this low-cost form of transportation available to others than the pipe-line owner so that they might sell in the wider markets reached and served by pipe line. The purpose of the pipe-line provisions of the Act was to bar the pipe-line owner's monopolization of this means of transportation, by imposing the duty to carry for others. See 234 U. S. at pp. 558–559. Such purpose clearly embraces Champlin's pipe line, which provides a low-cost medium for transporting goods for sale in distant and more favorable markets.

The Uncle Sam Company, in contrast, had oil wells in one place and a refinery for processing the output of its wells in another place, and constructed a pipe line for the sole purpose of linking the wells, from which it drew the oil which it intended to convert into refined products, with the manufacturing plant built to effect such conversion. The pipe line thus was, in a very real sense, a plant facility, and it is not without significance that the pipe line built for this use was only 60 miles long.[9]

In the *Champlin* case this Court concluded (329 U. S. at p. 33) that "it would expand the actual holding" as to the Uncle Sam Company in the *Pipe Line Cases* "to apply its conclusion to Champlin." The grounds for this conclusion were briefly stated as follows (pp. 33–34):

> The controlling fact under the statute is transporting commodities from state to state by pipe line. * * * While Champlin technically is transporting its own oil, manufacturing processes have been completed; the oil is not being moved for Champlin's own use. These interstate facilities are operated *to put its finished products in the market in interstate commerce at the greatest economic advantage.* [Italics supplied.]

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[9] See record as to the Uncle Sam Oil Company incorporated in the record in the *Champlin* case (Record in No. 75, October Term, 1945, pp. 571, 613).

The Court's statement that "manufacturing processes have been completed" as to products transported through Champlin's pipe line applies equally to the situation existing at the time of the present proceeding. No different conclusion can be drawn from the testimony of Champlin's officer that it has "always done some blending and treating" of its products at the pipe-line terminals, that it is "now constructing Ethyl plants at the Superior and Rock Rapids terminals," that these plants when completed, will be used for the purpose of further processing, treating and preparing for sale approximately 20% of the gasoline stored at these points (R. 127).[10] We submit that the "blending and treating" referred to in this vague and indefinite testimony is merely a minor step incident to favorable sale of goods as to which "manufacturing processes have been completed," and is not even remotely comparable to the refining operations by which crude oil is converted into gasoline and other refined products. In any event, moreover, some 80% of the products transported reach purchasers without being subjected even to "blending and treating."

The words of the statute, "engaged in * * * transportation of oil * * * by pipe line," are

[10] See also the district court's finding based on this testimony (R. 42).

general in their application.[11] The ruling as to the Uncle Sam Company carved out an implied exception as to a pipe line used solely to link one step in production (drawing crude oil from the earth) with a second step (converting the crude into refined products). In the absence of strong affirmative reasons therefor, the "actual holding" as to the Uncle Sam Company should not be expanded by engrafting upon the broad phraseology of the statute further implied limitations and exceptions.

In the instant case the Commission stated in its report; "Apparently common-carrier pipeline transportation is available to any small refiner in this area desiring such transportation" (R. 12). It is not to be assumed from this statement that refiners suffer no disadvantage when denied access to pipe lines not operated as common carriers. In the first place, some of these lines serve areas not served by common-carrier lines (Ex. 3, Ex. Vol. 2). In the second place, such lines may be much closer to a refinery than any common-carrier line.[12] In the third place, the Commission's statement as to availability was based on the testimony of Champlin's officer that Exhibit 3 "shows that if any small refiner in

[11] The wording of the Hepburn Act was substantially identical, "engaged in the transportation of oil * * * by means of pipe lines."

[12] See the Magnolia line, with reference to refiners located to the west of it, and Champlin's line with reference to the refinery at Phillipsburg, Kansas (Ex. 3, Ex. Vol. 2).

this area desires common carrier pipe line transportation, such transportation is available to it *by the building of a connecting line*, as Sunray, Kanotex and Wilcox have done" (R. 94). The witness described this line as originating at Duncan, Oklahoma, and running east to Allen and then north to connect with the Great Lakes common-carrier pipe line near Cushing, Oklahoma (R. 95), a line which appears to be nearly 200 miles long.[13] Common-carrier pipe-line transportation dependent upon construction of many miles of connecting line can be regarded as "available" in only a very limited sense.

The cost of transporting oil and refined petroleum products by pipe line is less than half the cost of transportation by rail.[14] Champlin, like other similarly situated pipe-line companies, is therefore in a position to profit from exclusive use of its pipe line to obtain a preferred position in markets which the pipe line serves, in much the same way that the pipe-line companies held to be within the Act in the *Pipe Line Cases* (234 U. S. 548) were able, because of exclusive use of their pipe lines, to exercise substantial control over market price of crude oil in producing fields

[13] As shown in Exhibit 3, this line is about three-fourths the length of Champlin's line from Enid to Superior, a distance of 256 miles (*supra*, p. 7).

[14] Cook, *Control of the Petroleum Industry by Major Oil Companies*, Temporary National Economic Committee, Monograph No. 39 (1941), pp. 19, 37; Pogue, *Economics of the Petroleum Industry*, Part 14 T. N. E. C. Hearings 7457, 7476.

for which their pipe lines were outlets. Champlin's pipe line thus comes within the purpose of the pipe-line provisions of the Hepburn Act, to prevent the monopoly power in local markets resulting from exclusion of others than pipe-line owners from this low-cost form of transportation.[15] We submit that there is no difference in principle between exclusive pipe-line use giving monopoly power at points where transportation starts, as in the case of the pipe-line companies which were part of the early Standard Oil combine, and exclusive pipe-line use giving monopoly power at points where transportation ends, as in the case of Champlin.[15a]

Champlin's pipe-line operations at the time of the hearing in the instant case were essentially the same as they had been at the time of the valuation proceeding (*supra*, pp. 3–4, 11). Under this Court's decision in the prior *Champlin* case Champlin is, therefore, subject to the provisions of the Interstate Commerce Act unless Champlin's subsequent change in the formula by which it computed sales prices for products moved through its pipe line requires a different result. Neither the Commission nor the court below regarded this change as of significance. But the important point is that this Court's decision in

[15] See Whitesel, *Recent Federal Regulation of the Petroleum Pipe Line as a Common Carrier*, 32 Cornell Law Quarterly 336, 341, 349–352.

[15a] See Note, *Public Control of Petroleum Pipe Lines*, 51 Yale L. Jour. 1338, 1340, 1345, 1347–1348.

the *Champlin* case did not rest upon the pricing method then used by Champlin.

In that case this Court said (p. 34) that examination of Champlin's pricing methods "supports the view" that it is engaged in "transportation" within the meaning of the statute. Champlin's method of pricing, as described by the Court, was that price at the terminal points included f. o. b. price at the Enid refinery and a "differential" which was the through railroad freight rate from Enid to final destination less the transportation charge (paid by the purchaser) from the pipeline terminal to final destination. The Court said that even though departures from the calculated differential were substantial and frequent, "we think this practice points up a significant distinction from the *Uncle Sam* case."

The Court thus regarded Champlin's pricing method as further confirming the conclusion that Champlin used its pipe line to put its goods in interstate markets "at the greatest economic advantage" and that such use constituted a "significant distinction" from the *Uncle Sam* case. But the decision that Champlin was a "common carrier" subject to the Act within the meaning of Section 1 was not rested upon its use of the pricing method described in the Court's opinion. A decision resting upon this ground would have required determination of the question whether price was generally computed in accordance with the described method or whether such method was

largely a paper formula—a question which the Court treated as immaterial.

Whether or not Champlin is engaged in "transportation" within the meaning of the Act depends upon the character of its pipe-line transportation, not upon the formula used in computing the selling price of transported products. This Court in the prior *Champlin* case gave attention to the pricing formula which had been employed merely because it pointed up "a significant distinction" between Champlin's pipe-line transportation and the kind of intra-plant transportation involved in the *Uncle Sam* case, where the transportation linked one step in production with another in order to complete manufacture of the product intended for sale in commerce. Champlin's pricing method was significant in that it dramatized the underlying economic facts with reference to Champlin's use of its pipe line—that the line was and is used to transport petroleum products for purposes of sale and that the cost of such transportation is necessarily a factor in sales price, as the Interstate Commerce Commission expressly found (R. 11). The underlying economic facts remain the same whether or not the charge for transportation is identified as such in the pricing formula employed.

The formula making transportation rates a factor in computing sales price would have had significance even though, prior to institution of the valuation proceeding Champlin had discontinued

use of this formula. We submit that this Court's decision in the *Champlin* case does not mean that the pricing formula to which the Court refers made Champlin a common carrier subject to the Act at that time and until May 9, 1948, so that Champlin ceased to be a common carrier within the meaning of the Act on and after May 10, 1948, when this formula was no longer used.[16]

II

The Commission's order does not take Champlin's property in violation of the due process requirements of the Fifth Amendment

In the *Champlin* case the Court found it unnecessary to pass upon Champlin's contention that the Act, if construed to mean that Champlin was within the statutory definition of common carrier, would violate the due process clause by imposing upon a private carrier the obligations of a common carrier. The Court said that this objection was "too premature and hypothetical to warrant consideration." The Court pointed out that the order directing compliance with the valuation provisions of Section 19a did not change Champlin's "obligations to any other

[16] We deem Champlin's purpose in changing its pricing formula irrelevant, i. e., whether the change was made in order to lay a foundation for the claim that Champlin was no longer subject to the Act or whether it was made in order to employ a formula corresponding more closely to the prices actually charged.

company or person" and that to require Champlin "to provide information about a subject within the power possessed by Congress and delegated to the Commission * * * cannot be considered a taking of property even if it arouses appellant's [Champlin's] premonitions." 329 U. S. 29, at p. 35.

In *Valvoline Oil Co.* v. *United States,* 308 U. S. 141, 146–147, the Court likewise so ruled with respect to a Commission order directing a pipe-line company to comply with Section 19a.

Under these decisions, the Commission's order in the instant case plainly presents no constitutional question requiring consideration insofar as the order compels compliance with Section 20 of the Interstate Commerce Act. The filing of "annual, periodical, or special reports," as required by paragraphs (1)–(2) of Section 20, is in all respects analagous to the furnishing of information under the valuation provisions of Section 19a.

The direction to maintain a uniform system of accounts pursuant to paragraphs (3)–(4) of Section 20 likewise gives rise to no due process question ripe for consideration. The commerce power of Congress "is not dependent on the technical common carrier status but is quite as extensive over a private carrier" (329 U. S. 29, at p. 35) and, from the due process angle, prescription of a uniform system of accounts does not change Champlin's obligations to any other

person. There is, moreover, ample statutory precedent, never seriously questioned on grounds of constitutionality, for requiring those who carry goods in interstate commerce, but not as a common carrier, to maintain a uniform system of accounts. For example, a contract carrier by motor vehicle may not engage in interstate transportation (except as to pre-statutory bona fide operations) without obtaining a permit therefor from the Interstate Commerce Commission,[17] and the Commission shall attach to such permit such terms and conditions as are necessary to provide for establishing a "uniform system[s] of accounts."[18]

There remains the question of what, if any, due process issue is presently posed by the part of the Commission's order directing the filing of schedules of Champlin's charges for interstate transportation of oil, as required by Section 6 of the Act. This is precisely what was directed by the order of the Commission which was under attack in the *Pipe Line Cases*, where the Court did pass upon constitutionality from the standpoint of due process (234 U. S. 548, at p. 561).

The required filing of tariff schedules certainly bears a close relation to the duty, under Section 1 (4) of the Act, to furnish transportation to

[17] Sec. 209 (a) of Interstate Commerce Act, 49 U. S. C. 309 (a).

[18] Secs. 204 (a) (2), 209 (b) of Interstate Commerce Act, 49 U. S. C. 304 (a) (2), 309 (b).

others upon reasonable request therefor. It is submitted therefore that it is appropriate for the Court to pass upon the question whether the due process limitations of the Fifth Amendment are violated if Champlin may be required, under any circumstances, to transport goods other than its own. But the Court, in ruling on constitutionality, may not properly assume that the Commission's order will require transportation for other persons for which Champlin will not be fully compensated.

Champlin may protect itself against unreasonable tenders of products for transportation, by limitations and conditions incorporated in the tariffs filed in compliance with Section 6 of the Act.[19] A carrier's tariffs and operating rules may be adapted to the nature and character of the particular traffic involved or other special circumstances.[20] But the point we emphasize is that

[19] The Interstate Commerce Commission has found that 25,000 barrels is a reasonable minimum-tender requirement by common-carrier gasoline pipe lines when normal transportation service is demanded, and 5,000 barrels a reasonable minimum requirement for delayed shipment, i. e., for delay until 25,000 barrels of gasoline of the same specifications have been accumulated at the receiving point. *Petroleum Rail Shippers' Assn.* v. *Alton & Southern R. R.*, 243 I. C. C. 589, 657–658, 665 (1941).

[20] Tariffs and operating rules covering transportation of livestock, explosives, circuses, etc., obviously may differ widely in their provisions from those applicable to transportation of commodities such as stones or bricks. See *Davis* v. *Henderson*, 266 U. S. 92; *Bodine & Clark Livestock Commission Co.* v. *Great Northern Ry. Co.*, 63 F. 2d 472 (C. A. 9), certiorari denied, 290 U. S. 629.

the question of injury to Champlin from required carriage of goods for others "is too premature and hypothetical to warrant consideration on this record." See *Champlin* case, 329 U. S. at p. 35.

We submit, therefore, that the only constitutional question now before this Court is whether subjecting Champlin to the obligation to carry someone else's goods for compensation, under circumstances not now disclosed or determined, is in and of itself a taking of property without due process, upon the theory that imposition of such an obligation constitutes an enforced change in the nature of the business undertaken by Champlin. The constitutionality of such requirement is clearly set at rest by the decision in the *Pipe Line Cases,* as applied and construed in *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U. S. 125.

Champlin did not construct its interstate pipe line until long after adoption of the pipe-line provisions of the Hepburn Act of June 29, 1906, making interstate pipe-line companies subject to the provisions of the Interstate Commerce Act. By its own voluntary act, therefore, Champlin subjected its property to the conditions imposed by the statute and may not now be heard to say that their enforcement constitutes a violation of due process. In the *Pipe Line Cases,* Mr. Justice Holmes, speaking for the Court, said (p. 561):

> So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there

> can be no doubt that it is valid. So the [constitutional] objection is narrowed to the fact that it applies to lines already engaged in transportation.

In the *Pierce Oil* case, *supra,* the Oklahoma statutes dealing with pipe lines provided that no corporation (domestic or foreign) should have the right to engage in transportation of crude petroleum through pipe lines within the state "for hire or otherwise" except as authorized therein, and that every corporation engaged in such business under the state laws should "be deemed a common carrier thereof, as at common law." The Pierce Oil Corporation was incorporated in Virginia and qualified to do business in Oklahoma some years after the enactment of the pipe-line statutes. The Oklahoma Corporation Commission subsequently directed Pierce Oil to carry through its pipe line oil tendered to it by another corporation. This Court, on review of the decision of the Supreme Court of Oklahoma upholding this order as against the contention of Pierce Oil that it was not and had never held itself out to be, a common carrier, held that its entry into the state when the state law imposed a common-carrier status, barred the contention that imposition of this status was unconstitutional. This Court said (p. 128):

> * * * the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself,

> made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous. * * * A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in the *Pipe Line Cases,* 234 U. S. 548, 561, in a single sentence, saying: "So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid."

The above decision was not rested, even in part, on the proposition that one who has benefited from privileges conferred by a statute may not attack its constitutionality. The Court's opinion makes no reference to any benefit received by Pierce Oil by virtue of privileges conferred by the Oklahoma pipe-line statutes.

Contract carriers are not common carriers, but federal legislation prohibits "contract" carriers by motor vehicle and "contract" carriers by water from undertaking any new carriage in interstate commerce without obtaining a permit therefor from the Interstate Commerce Commission.[21] The constitutionality of such prohibition has been assumed in cases involving its application. *Noble* v. *United States,* 319 U. S. 88; *Schenley Distillers*

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[21] Secs. 209 and 309 (f) of Interstate Commerce Act, 49 U. S. C. 309, 909 (f).

Corp. v. *United States*, 326 U. S. 432. See *Cornell Steamboat Co.* v. *United States*, 321 U. S. 634. But there is at least as great a "taking" of property when interstate transportation is absolutely barred unless an administrative tribunal finds it to be "consistent with the public interest and the national transportation policy" declared in the Interstate Commerce Act as when transportation by pipe line is barred unless the carrier transports, in addition to its own goods, the goods of others. The pipe-line provisions of the Interstate Commerce Act in effect constitute a declaration by Congress that the public interest is served by confining interstate transportation by pipe line of oil and other commodities to those who are common carriers. In this connection it is significant that various states have taken a similar view and have enacted legislation which bars, directly or indirectly, transportation by pipe line of oil or petroleum products except as a common carrier.[22]

While the question is not presented in this case, it is submitted that the provisions of the Interstate Commerce Act requiring pipe-line companies to transport for others are not violative of

[22] Oklahoma Statutes Annotated, Title 52, Sec. 56 [R. L. 1910, Sec. 4309]; Deering's California General Laws (1944), Act 5632, Sec. 3; General Statutes of Kansas (Annotated) (1935), Sec. 55-501 [L. 1905, Ch. 315, Sec. 1]; Vernon's Texas Civil Statutes, Art. 6018 [Acts 1917, p. 48]. The Kansas and Texas statutes cover only transportation by pipe line of crude oil.

due process even as applied to a company engaged in pipe-line operations prior to enactment of these provisions. In *Fordham Bus Corp.* v. *United States,* 41 F. Supp. 712 (S. D. N. Y.), Circuit Judge Frank, speaking for a three-judge district court, said (p. 715) that the "basic postulate" of decisions that it is a violation of due process to convert a private carrier, by legislative fiat, into a common carrier "was destroyed by the later decision in *Nebbia* v. *New York,* 291 U. S. 502." Thus statements such as those made in *Producers Transportation Co.* v. *Railroad Commission,* 251 U. S. 228, 230–231, appear to be no longer controlling.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, with directions to dismiss the appellee's complaint.

Respectfully submitted.

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APPENDIX A

Sections 1, 6 and 20 of part I of the Interstate Commerce Act, 24 Stat. 379, as amended, 49 U. S. C. 1, 6, 20, provide in part as follows:

SEC. 1 (1) That the provisions of this part shall apply to common carriers engaged in—

* * * * *

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line * * *

(c) from one State * * * to any other State * * *.

* * * * *

(3) (a) The term "common carrier" as used in this part shall include all pipeline companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." * * *

* * * * *

SEC. 6 (1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier

by railroad, by pipe line, or by water when a through route and joint rate have been established. * * *

* * * * *

SEC. 20 (1) The Commission is hereby authorized to require annual, periodical, or special reports from carriers (as defined in this section) * * *. Such annual reports shall give an account of the affairs of the carrier or lessor in such form and detail as may be prescribed by the Commission.

(2) Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, * * *.

(3) The Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this part, prescribe a uniform system of accounts applicable to any class of carriers subject thereto, and a period of time within which such class shall have such uniform system of accounts, and the manner in which such accounts shall be kept.

(4) The Commission shall, as soon as practicable, prescribe for carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. * * *

* * * * *

(8) As used in this section, * * * the term "carrier" means a common carrier subject to this part, * * *.

APPENDIX B

Legislative History of Pipe-Line Amendment of Hepburn Act

The provision of the Hepburn Act, relating to pipe lines was offered as an amendment by Senator Lodge of Massachusetts on May 4, 1906 (40 Cong. Rec. 6361). Senator Foraker, of Ohio, thereupon stated (*ibid*):

> I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that it shall apply only to pipe lines operated for the public. I do not understand how you would compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private pipe lines that an individual or a single corporation may have laid down and put into operation for its own benefit.

To this Senator Nelson of Minnesota replied (40 Cong. Rec. 6365):

> * * * if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public."

Senator Lodge also replied (*ibid.*):

> Mr. President, the purpose of this [the original] amendment is to bring the transportation of oil and other commodities within the interstate-commerce law. * * * But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota [Mr. Nelson] says, absolutely destroy the value of my amendment.

After the Lodge amendment had been agreed to in Committee of Whole (40 Cong. Rec. 6373), it was debated in the Senate (40 Cong. Rec. 6953, *et seq.*) and Senator Foraker again urged the insertion of "for the public," "for hire," "for compensation," or other similar terms. *Id.*, 6999–7000. Senator Lodge vigorously opposed such modification of the wording, and declared that such a limitation would absolutely destroy the effectiveness of the proposed legislation. He said (*id.*, 7000):

> If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment. * * * if you put in the words

> "for the public," after "transportation," you practically kill the amendment.

Senator Culberson of Texas said (40 Cong. Rec. 7005):

> The first section of the bill as it has been amended provides in effect that the provisions of this act shall apply, among others, to *any* corporation or any person or persons engaged in the transportation of oil or other commodity by means of pipe lines, and that they shall be considered as common carriers within the meaning of this act. Nothing is left to the courts for construction, but the statute itself declares that any corporation, or any person or persons engaged in transporting oil by pipe lines—of course, as interstate commerce—are common carriers, and are declared to be such in this act of Congress, subject to the authority of this act, by the Interstate Commerce Commission.

Again, during debate on the second conference report, Senator Foraker pointed out that the provision which had been adopted by the Senate made all pipelines common carriers (40 Cong. Rec. 9107), and referred to his repeated efforts to obtain amendments, which the Senate had refused to adopt (*id.*, 9255). There was general agreement, both among supporters and opponents of the pipeline provision, as to what it was intended to accomplish.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MOTION TO AFFIRM

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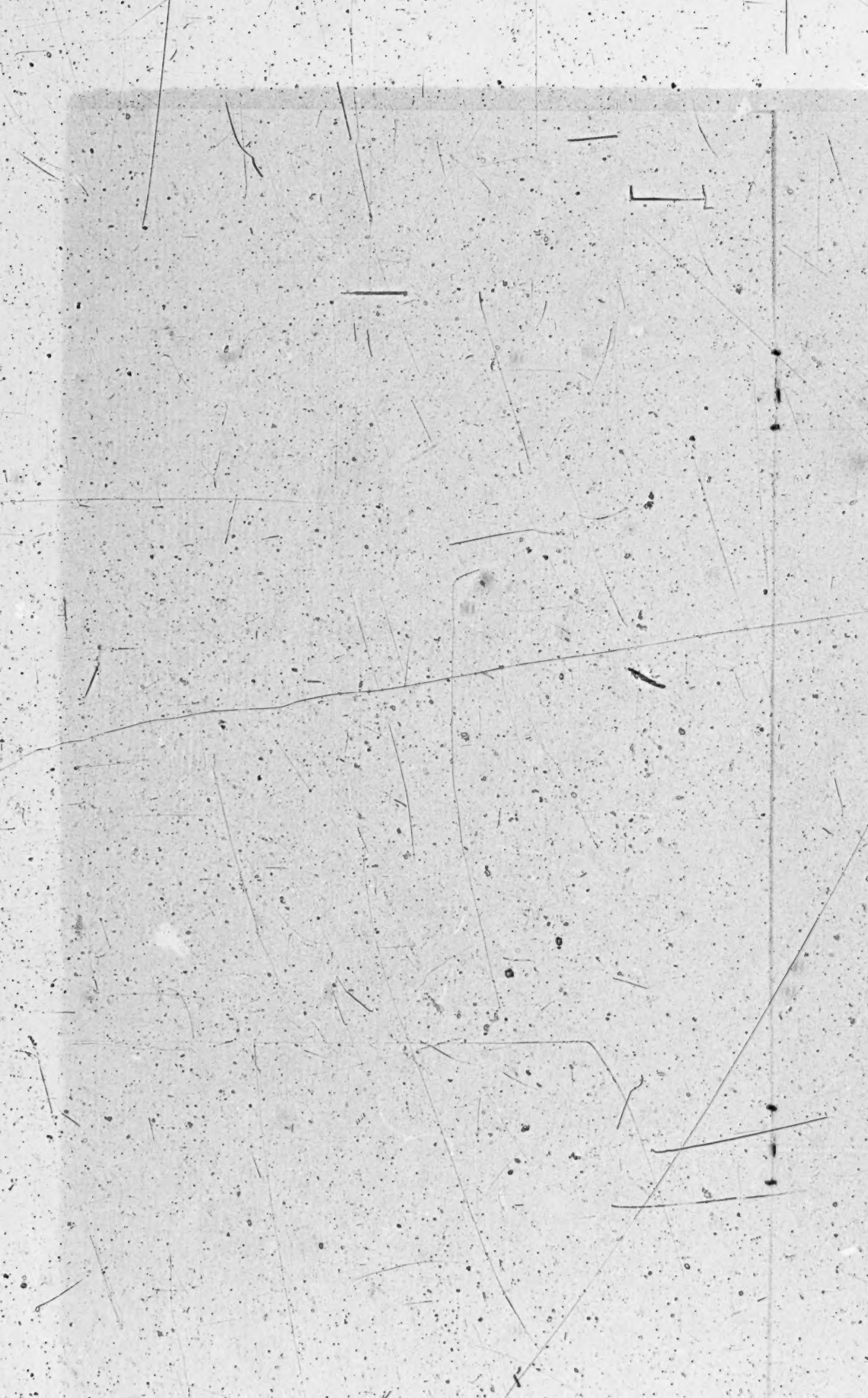

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MOTION TO AFFIRM

Appellee, pursuant to Rule 12, Paragraph 3, of the Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the District Court be affirmed.

This is a direct appeal from the final judgment and decree entered on August 28, 1950, by a District Court of three judges specially constituted, pursuant to 28 U. S. C. 2284 and 2325, setting aside the orders of the Interstate Commerce Commission of June 13, 1949, in Docket No. 29,912, directing the Champlin Refining Company, appellee, to file reports with the said Interstate Commerce Commission, and to institute and maintain a uniform system of

accounts applicable to pipe lines; and to publish and file tariffs showing its rates and charges for Interstate transportation of refined petroleum products in Docket No. 29,912 (Sub-No. 1). Appeal was allowed on October 25, 1950, and appeal papers were served on counsel for the Champlin Refining Company, appellee, on October 26, 1950.

The constitutional question in this appeal was before the Supreme Court upon a former appeal between the same parties in No. 75, October Term, 1945, decided November 18, 1946, 329 U. S. 29-40, 91 Law Ed. 22-28.

It was there contended by Champlin—appellant, that the *act* as construed by the Commission upon the "valuation orders" in that appeal was in violation of the commerce power of Congress and violative of the due process clause of the Fifth Amendment because * * * such there complained of orders converts a private pipe line into a public utility and requires a private carrier to become a common carrier.

Mr. Justice Jackson, in disposing of such contention, said:

> "But our conclusion rests on no such basis and affords no such implication. The power of Congress to regulate interstate commerce is not dependent on the technical common carrier status but is quite as extensive over a private carrier. This power has yet been invoked only to the extent of requiring Champlin to furnish certain information as to facilities being used in interstate marketing of its products. The commerce power is adequate to support this requirement whether appellant be considered a private carrier or a common carrier.
>
> "The contention that the statute as so construed violates the due process clause by imposing upon a private carrier the obligations of a conventional common carrier for hire is too premature and hypothetical to warrant consideration on this record. The appellant in its entire period of operation has never been

asked to carry the products of another and may never be. So far, the Commission has made no order which changes the appellant's obligations to any other company or person. If it does, it will be timely to consider concrete requirements and their specific effects on appellant. At present, appellant is asked only to provide information about a subject within the power possessed by Congress and delegated to the Commission, and that cannot be considered a taking of property even if it arouses appellant's premonitions."

The orders here complained of are exactly the orders which Mr. Justice Jackson was considering in his observations with regard to Champlin's "premonitions" as to the possibility of the future entry thereof.

The adverse disposition of the Commission's orders, and resulting decision which the District Court has made is plainly correct.

We respectfully submit, therefore, that the appellants present no substantial question for the decision of this Court, and that the judgment and decree of the District Court should be affirmed.

DAN MOODY,
HARRY O. GLASSER,
NATHAN SCARRITT,
Counsel for Appellee.

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BRIEF FOR THE CHAMPLIN REFINING COMPANY

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OPINION BELOW

The opinion below with dissent, (R. 32-41) is not yet reported.

JURISDICTION

Jurisdiction of this Court is conferred by 28 U. S. C. 1253, 2101 (b) and 2325.

QUESTIONS PRESENTED

In the prior Valuation Case (*Champlin Refining Company* v. *United States*, 329 U. S. 29) this Court held that the Interstate Commerce Act supported an order of the Interstate Commerce Commission requiring Champlin to file valuation reports. It was said in the opinion that Champlin's contention that the order violated the Fifth Amendment by imposing upon a private carrier the burdens of a common carrier was premature in that the mere making of valuation reports did not constitute a taking of property.

The opinion stated that the decision in the Valuation Case "affords no * * * implication" that this Court would uphold an order which, "converts a private pipe line into a public utility and requires a private carrier to become a common carrier".

The opinion stated further that if the Commission should ever attempt so to do, this Court would be open to hear Champlin's complaint.

The Commission is now attempting to compel Champlin to file tariffs, and to file the annual reports and institute the uniform accounts required of common carriers under the Act, which in Appellee's belief would constitute a commitment upon its part to carry all oil offered it. What this Court described as premonitions have now become actualities.

However, the constitutional question is not the only question involved in the present action. Since the trial of the Valuation Case, Champlin's pipe line operations have been altered in material respects, by reason of which the legal basis for the Court's holding in the prior case has been eliminated in this case.

We, therefore, present to this Court the following questions:

(1) whether appellee is estopped by the judgment in the Valuation Case to challenge the validity of the order involved in this case;

(2) whether the order complained of takes Champlin's property without due process of law in violation of the Fifth Amendment to the Constitution;

and

(3) whether Champlin is subject to the requirements of Sections 6 and 20 of the Interstate Commerce Act.

The related incidental questions will be considered in their order as they arise.

STATUTES INVOLVED

Section 1 of the Act to Regulate Commerce (24 Stat. 379), February 4, 1887; Section 1 of the Hepburn Amendment (34 Stat. 584), June 29, 1906; Section 1 of the 1920 Amendment to the Interstate Commerce Act (41 Stat. 474-478), February 28, 1920, are the pertinent statutes. They are printed in Appendix "A". (69-76)

STATEMENT OF THE CASE

This suit, brought by Champlin Refining Company against the United States to set aside the latest of two orders made by the Interstate Commerce Commission in furtherance of its program to compel Appellee to operate its pipe line as a common carrier, is the second suit filed by Appellee in resisting the program of the Commission and in an effort to protect its private use of its products pipe line.

The first order promulgated by the Commission purported to require Appellee to prepare and file with the Interstate Commerce Commission an inventory, schedules, maps and charts of its pipe line. Appellee brought suit to prevent the enforcement of that order. The case was determined by a three-judge court (*Champlin Refining Company* v. *United States*, 59 Fed. Supp. 978). The case was argued before this Court November 8, 9, 1945; re-argued October 18, 21, 1946; and decided November 18, 1946

(*Champlin Refining Company* v. *United States et al.*, 329 U. S. 29).

Thereafter, Counsel for the Champlin Refining Company, received a letter from the Department of Justice dated May 23, 1947, (Appendix "B") making inquiry as to whether schedules of rates had been filed with the Interstate Commerce Commission by the Champlin Company and if not as to whether Champlin would care to state the reasons, if any, why such schedules have not been filed, and making reference to possible penalties by citing Section 1 of the Elkins Act (49 U. S. C. 41).

Further proceedings were had before the Commission, which were followed by the order complained of in this suit.

The order of the Commission purports to require Champlin:

(a) to file tariffs as required by Section 6 of the Interstate Commerce Act;

(b) to file annual and other reports as required by Section 20 of the Act;

and

(c) to adopt the system of accounts prescribed by the Commission under Section 20 of the Act.

In the present proceeding, the Department of Justice continues its position in the former Valuation Case, to wit, that the Champlin products pipe line is a "common carrier" for all purposes, under the Interstate Commerce Act.

Appellant's fact statement is substantially correct, except that appellee deems it proper to add certain material facts disclosed by appellee's evidence in these proceedings.

NATURE OF CHAMPLIN'S OPERATIONS

(1) Champlin's products pipe line is a private means of transportation

The Commission and the Three Judge Court agree that the pipe line in question is now and always has been used by Champlin for the exclusive purpose of transporting its own products, from its own refinery, to its own storage tanks.

The finding in this connection, by the Commission, is as follows:

> "Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State Commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line." (R. 142, 143)

The Three Judge Court made the following additional finding:

> "Champlin could not transport the petroleum products of others without constructing facilities for receiving such products into its line and without constructing terminal facilities for delivering such products at the end of their transportation." (R. 32)

The Commission has conceded (61st Annual Report, p. 88), and indeed the Supreme Court found in the Valuation Case, that the Champlin line is not a common carrier under the common law test.

The facts as quoted under this sub-head are used to show that the Champlin operations are clearly distinguishable from the operations of the companies which were found to be "common carriers in substance" in the *Pipe Line Cases* (234 U. S. 548). Champlin carries no one's products except its own. The companies in the *Pipe Line Cases* were found to carry "everybody's oil".

(2) It is vitally necessary to the security of its business that Champlin have the full capacity of the pipe line for the movement of its own products to market

The building of the products line saved Champlin from practical extinction, and its unrestricted use is now equally imperative to enable Champlin to hold its present position in the market which it serves.

This conclusion is supported by the Commission in its decision in the Valuation Case, where it was said:

> "For some years prior to 1935, the business of the Champlin showed a steady decline, because the construction of refineries in areas near former markets and the operation of pipe lines, barge lines, and transport trucks provided sources of supply near many customers, all of which was destructive of trade connections of the Champlin in the territory thus affected. The construction of the pipe line resulted in an upward trend in business of the Champlin so that by 1940 the company had reached a volume of business equal to the peak previously enjoyed." (49 Val. Rep. 463) (Valuation R. Vol. II, p. 528)

The Three Judge Court confirmed the Commission's findings in these respects in this proceeding. (R. 44) See Exhibit 2, Exhibit Volume 1, p. 1. (R. 90-92, 140)

The Champlin Company does in fact employ the full capacity of its products pipe line.

The Commission found in this proceeding:

> "For all practical purposes, the entire capacity of the pipe line is used in transporting the products of

Champlin's refinery for distribution in this area." (R. 145)

The Three Judge Court found in this connection:

> "* * * Champlin uses the capacity of this pipe line in moving these products to its marketing territory in and around Hutchinson, Superior and Rock Rapids, and the pipe line constitutes the only means by which Champlin can move its products to its said marketing territory on an equal marketing basis with its larger and more powerful competitors. If Champlin were compelled to share its pipe line with its competitors, the result would be to deny to Champlin access to a market upon which Champlin's continuing in business depends." (R. 43, 44)

(3) There is not the slightest element of monopoly in Champlin's operations

No *shipper* is dependent upon the use of Champlin's line. The Commission and the Three Judge Court agree as to this conclusion.

The Commission in its report, found in this respect, as follows:

> "The capacity of the pipe line (Champlin's), 9,800 barrels a day * * *. The common-carrier pipe line capacity available to refineries in Oklahoma and Kansas aggregates 172,800 barrels a day, and respondent's pipe line is the smallest of any common carrier or private pipe line operating in this territory. *Apparently, common-carrier pipe line transportation is available to any small refiner in this area desiring such transportation.*" (R. 145) (Italics ours)

The Three Judge Court agreed with the Commission upon the foregoing finding and made the further finding:

> "No refiner of petroleum products other than Champlin is dependent on the Champlin line as an outlet to the markets." (R. 46)

Exhibit 4, Exhibit Volume p. 3, (R. 95, 140) shows graphically the vast amount of common carrier pipe line capacity in the area, as compared with the relatively inconsequential capacity of the Champlin's private line.

Furthermore, no purchaser of products is dependent upon Champlin's pipe line.

The Commission's finding on this point is as follows:

> "Only about 1.98 percent of the total gasoline consumed in the area is moved through the pipe line and sold from respondent's terminal storage facilities. (R. 145)
>
> • • •
>
> "Champlin's daily refining capacity of 18,000 barrels is small compared with the capacity of its large competitors in the same area. There are 86 wholesale outlets, including refineries, pipe line terminals, and barge terminals, in this marketing area which are competing for the business of practically every prospective customer and, in addition, any jobber in the area may purchase his products from the 60 or more refineries in Oklahoma, Kansas, Arkansas, Illinois, Indiana, Texas, Wyoming, and Montana, which deliver petroleum products into the territory by truck and rail." (R. 145)

The Three Judge Court agreed upon the above quoted finding and made the following additional findings:

> "No purchaser of refined products is dependent upon the Champlin pipe line as a source of supply. There are 86 wholesale outlets in the trade territory served by Champlin, distributing the products of 28 refineries. Every purchaser or prospective purchaser of Champlin products in this trade territory has available to him the products of these many marketers that are competing with Champlin in the sale of petroleum products. Purchasers of Champlin products buy in a competitive market and are free to sell at prices over which Champlin does not have any control. For the six months period immediately prior to the institution of the proceedings by the Commission which resulted

in this action, only 1.98 percent of all of the gasoline consumed in the area served by the Champlin pipe line was moved through its pipe line and sold from its storage facilities." (R. 46)

See Exhibit 3, Exhibit Volume p. 2, (R. 92, 140) for map showing location of wholesale outlets consisting of refineries, pipe line terminals and barge terminals.

The Three Judge Court further found:

"Champlin is what is known in the industry as an independent company. It is a small company in comparison with companies with which it competes in the area reached by its pipe line. It occupies such a relatively minor place in the gasoline market in the middle west that it is in no position to control the price of gasoline, kerosene, tractor fuel or burning oil, either by raising or lowering the price thereof; it is in no position to support price advances by its competitors or to survive price cutting by its competitors. Champlin does not have a monopoly or any power to establish a monopoly either in the transportation of petroleum products into the trade territory or in the sale of petroleum products therein. Champlin's acts create competition." (R. 47)

Exhibit 9, Exhibit Volume p. 7, (R. 101, 140) shows that Champlin sells less than 2% of the products consumed in its marketing area. This Exhibit further shows the relative volume of products sold by Champlin in each state therein.

See, also, Exhibit 6, Exhibit Volume p. 5, (R. 99, 140) which shows capacities of refineries using pipe lines in the area.

The facts referred to in this sub-head sharply distinguish the situation in the present case from that in the *Pipe Line Cases*, in which the pipe line companies there involved were found to have a virtual monopoly on pipe line transportation from the fields, east of the Rocky Mountains.

These facts also distinguish Champlin's operation from the rule of the *Valvoline* Case, in which it was stated that:

> "Certainly one would find a public interest in the *sole means* of transporting this commodity from thousands of wells for thousands of producers." (308 U. S. 145) (Italics ours)

The Government points out in its brief that Champlin's refinery, with capacity of 18,000 barrels per day, is the fifth largest in Oklahoma.

However, it is not the size of a single refinery but the aggregate refining capacity of the company which determines its power in the market. Champlin has but one refinery serving one marketing territory. The larger companies, in contrast, have many refineries serving many marketing territories.

Of the companies which compete with Champlin for the market, one has an aggregate refining capacity of 412,200 barrels per day, or almost 24 times that of Champlin. One has a refining capacity of more than 20 times that of Champlin; two have refining capacities of more than 15 times that of Champlin; three have refining capacities of more than 10 times that of Champlin; four have capacities of more than 5 times that of Champlin. See Exhibit 7, Exhibit Volume p. 6. (R. 100, 140)

(4) Competing refiners could make tenders of products to the Champlin line which would, in large part, appropriate Champlin's line and drive it out of the markets

If one or more of Champlin's large and powerful competitors decide that they wish to appropriate part of Champlin's market, they could readily do so if Champlin's line were forced to accept any and all tenders of products made to it.

The finding of the Three Judge Court on this subject is as follows:

> "If Champlin were forced to open its line to the public, its competitors could make tenders to the extent that Champlin would be deprived of any use of its pipe line, and thereby of its means of access to the

market upon which Champlin depends. Twenty-three refineries (having a combined refining capacity of 365,000 barrels of crude oil per day) make deliveries of petroleum products into Champlin's trade territory through two common carrier pipe lines, one of which with more than 4 times the capacity of the Champlin line, crosses the Champlin line near Hutchinson, Kansas. Three of these refiners market petroleum products in Southwest Nebraska in quantities equalling more than 27% of the Champlin pipe line capacity in that area. These three companies could use a substantial part of Champlin's pipe line capacity and the additional 20 refineries above referred to could make tenders in excess of the total capacity of the Champlin line." (R. 46, 47)

See Exhibit 6, Exhibit Volume p. 5. (R. 99, 140)

The vital consideration to Champlin would be its loss of markets. The Three Judge Court found as follows on this point:

> " • • • the pipe line constitutes the only means by which Champlin can move its products to its said marketing territory on an equal marketing basis with its larger and more powerful competitors. If Champlin were compelled to share its pipe line with its competitors, the result would be to deny to Champlin access to a market upon which Champlin's continuing in business depends." (R. 44)

The Commission did not make any finding upon these conclusions.

We refer the Court to Exhibit 5, Exhibit Volume p. 4, (R. 96, 140) which discloses the vast amount of refined products which could be tendered to the Champlin line.

The facts hereinabove set out show that the taking of Champlin's property by the Commission's proposed order would not only be real and substantial, but disastrous to the business of the company as well.

(5) Champlin never transports products for any customer

Proof of the above statement is shown by Champlin's method of sales and deliveries. The findings of the Three Judge Court on this point are as follows:

> "Champlin markets the products that have been moved through its pipe line only after they have come to rest in storage tanks at the three named places and in instances of some products only after there has been an additional processing." (R. 43)
>
> • • •
>
> "All products which have been moved by means of the pipe line were manufactured by Champlin and belonged to Champlin, and Champlin in all instances retained title thereto, until sales were later made from the bulk storage tanks in which the products had come to rest after the pipe line movement. In no instance has Champlin made a sale on the condition that the products sold would be moved by means of the pipe line or contracted for the use of the pipe line as a means of making delivery of any petroleum products. At no time have any products been placed in the line consigned to or destined for any particular purchaser." (R. 43)

The Commission did not make any finding upon the facts hereinabove stated.

(6) Champlin uses its pipe line and its terminal storage as plant facilities

Champlin regularly uses its products line to relieve refinery storage, including the building up of stocks of burning oils in the terminals in the late summer so as to have sufficient stocks for the winter demand and the building up of gasoline stocks in the spring to care for the summer demand. (R. 122, 123)

Since the trial in the Valuation proceeding, and at the time of the trial of this proceeding, Champlin was constructing Ethyl plants at the Superior and Rock Rapids

terminals at a cost of approximately $30,000 each, to be used for the purpose of further treating and preparing for sale, gasoline stored at the terminals and for further processing approximately 20 percent thereof into Ethyl gasoline, a higher quality product for which there is a necessary demand on the market. (R. 127)

The processing which is performed at the terminals transforms the gasoline so processed into Ethyl gasoline and is distinctly a part of the manufacturing process.

> "The pipe line is * * * a plant facility." (Finding of fact (No. 5) of Three Judge Court, R. 42)

The facts set out under sub-heads 5 and 6 above, confirm Champlin's contention that its pipe line is not engaged in transportation for its customers, but on the contrary is a mere incident to the primary business of the company, which is the refining and marketing of petroleum products.

(7) Champlin's present pricing method is based solely upon competitors' prices; there is no element of a transportation charge in Champlin's prices

On May 10, 1948, the Champlin Company adopted its present method of pricing products which are sold from its pipe line terminals, which may be described as follows:

Champlin posts a separate set of prices for each of its three pipe line terminals. (R. 107) These terminal prices are determined solely by the competitive markets at the respective places of destination. (R. 108) Prior to the inauguration of the new pricing system, the Champlin sales organization made careful surveys of market prices and from this data the new terminal prices were set at those figures which were required to meet competition at the various destinations. (R. 121) These terminal prices are now determined in exactly the same manner as any other local merchant in the area would set his prices, whether for food, clothing or gasoline. No charge of any kind is added to the price at which the customers buy the products. (R.

121, 122) Allowances off of these posted prices are deducted whenever the destination is a locality where competitive conditions require a lesser price. These allowances are also posted. (R. 503-513) See, also Exhibit 16, Exhibit Volume p. 8. (R. 109, 140)

At the time of the trial of the Valuation Case, Champlin was using the so-called "differential" system for the pricing of its products. Briefly stated, the differential was a sum which, when added to what was the sale price of the products at the Enid refinery, resulted in the sale price f.o.b. the pipe line terminal that enabled the purchaser to move the products from the storage tanks at the pipe line terminal where he made his purchase to his place of business by means of his own choice, with a total resulting cost to him that did not exceed the sum for which he could have bought such products from Appellee's competitors, delivered at such purchaser's place of business.

In view of the importance attributed to the differential pricing system in the majority opinion in the Valuation Case, it is highly significant here that the differential method of pricing has been completely abandoned by Appellee.

The finding of the Commission on Champlin's present pricing method is as follows:

> "The differential method of pricing was abandoned on May 10, 1948. On and since that date the terminal prices have been posted at each terminal, and competitive market conditions are met by allowances under these terminal prices where required. These allowances range from ⅛ cent to ½ cent per gallon and are intended to place respondent's products on the market at the general market price in each locality served by the pipe line." (R. 143, 144)

The Commission concedes that the change in pricing methods resulted in a real change in prices:

> "The change-over on May 10, 1948, resulted in net increases or decreases of from ⅛ cent to ½ cent per

gallon at more than 70 percent of the destinations served by respondent out of its Superior and Rock Rapids terminals. A change of ⅛ cent per gallon or more is recognized in the trade as substantial." (R. 144)

The Commission further concedes that no separate charge is made by Champlin for transportation:

"No separate charge as such is now made for transportation, either in the invoices or in any contract for the sale of its products." (R. 144)

The Three Judge Court found that:

"No pipe line transportation charge is made either directly or indirectly to any purchaser of Champlin's product.

"No charge of any kind for transportation is stated in any invoice, and no provision for transportation charge is provided in any contract made by Champlin for the sale of its products. Champlin does not change its price structure because of increase or decrease, in cost of operating its products pipe line." (R. 45, 46)

The change in the factual situation as disclosed under sub-heads 6 and 7 above have eliminated the legal basis for this Court's decision in the Champlin Valuation Case, and warrant a determination by this Court that Champlin is not now under the Interstate Commerce Act.

SUMMARY OF THE ARGUMENT

1. The judgment in the prior suit was limited to an adjudication that the order directing Appellee to file inventories, schedules, maps and charts of its pipe line properties was valid. What the Court said in argument in reaching that conclusion, and particularly what the Court said to the effect that Appellee was engaged in transportation in interstate commerce, is not the judgment.

In the prior suit the Court held that the first order did not involve an unconstitutional taking of Appellee's prop-

erty, and said, in effect, that its decision did not rest upon any view that the Interstate Commerce Act does, or that legally it could, authorize the Commission to make or enforce orders which would require a private carrier to become a common carrier, and that the conclusion of the Court that the order there challenged was valid, did not afford any implication of a holding that the Act does, or legally could, authorize the Commission to require a private carrier to become a common carrier. Having expressly disavowed any intention to make any such holding, the Court then added that when, and if, the Commission makes any order changing Appellee's obligations to any other person or corporation "it will be timely to consider concrete requirements and their specific effects on appellant." (Appellee here)

In this suit the Court has before it the very issues upon which it reserved judgment in the prior suit. The challenged order has the effect to require Appellee to offer the services of its pipe line to the public. Appellants recognize this fact and state in their brief (39) that:

> "It is submitted therefore that it is appropriate for the Court to pass upon the question whether the due process limitations of the Fifth Amendment are violated if Champlin may be required, under any circumstance, to transport goods other than its own."

The "differential" which was treated, in the former case, as important in arriving at the conclusion that Appellee was engaged in transportation within the meaning of the Act has been abandoned (R. 44-45). The facts with respect to the pipe line operations have been more fully developed in this record than they were in the record in the prior case. It now appears that there is further processing of the products after they reach storage. Thus the bases for the conclusion that Appellee is engaged in transportation within the Act no longer exist. This suit then presents a different fact situation.

2. The order of the Commission involved in this suit, if enforced, would require Appellee to offer the services of its pipe line to the public. It is, therefore, void because it attempts a taking of private property in violation of the Fifth Amendment to the Constitution of the United States, notwithstanding Appellee's line was built after the enactment of the Hepburn Amendment.

3. The Interstate Commerce Act was directed at carriers engaged in interstate transportation of passengers or in interstate transportation of property for others. The Act was intended to prevent persons so engaged from exacting excessive charges for their services and from discriminating between passengers and between shippers. It was enacted to regulate interstate commerce and not to command that any person enter that field of business. It was directed "at common carriers exclusively * * * and not even at all these."

In the cases which have reached this Court involving pipe line operations, with the exception of the prior Champlin suit, the Court has held the operations of pipe lines to be within the reach of the Act only where the facts showed that the pipe line was engaged in transporting oil for others. It was the issue of whether the transportation was for the owner or for others that determined whether or not the pipe line operation was within the reach of the Act.

If the Act were construed to authorize the order involved in this suit, it would be void for its conflict with the Due Process Clause of the Fifth Amendment.

ARGUMENT.

1. The judgment in the prior suit was limited to the issue of the validity of the order there involved, and the judgment in that suit does not operate to estop Appellee to challenge the validity of the order involved in this suit

The order involved in the prior suit purported to have been issued under the authority of section 19(a) of the Interstate Commerce Act. Its purpose was to require Appellee to supply the Commission with inventories, schedules, maps and charts of its pipe line properties. The majority of the Court held that the order was authorized by the Act. The judgment in the suit was limited to an adjudication that the order there involved was within the power of the Commission.

The order involved in this suit is a materially different order from the order involved in the prior suit. This order would, if enforced, require Appellee to file schedules of rates and charges for the interstate transportation of petroleum products by means of its pipe line, and thus to offer the facilities of its pipe line to the public for the interstate transportation of petroleum products at the rates and charges stated in the schedules. By no stretch of the rule of *res judicata* or of the principle of estoppel by judgment can it be said that the decision in the prior suit determined that the Commission had power to issue and enforce the order involved in this suit.

Appellee does not understand that Appellants contend that the judgment in the prior suit is *res judicata* of the issue involved in this suit, but rather that Appellants contend that Appellee is estopped by expressions in the majority opinion in the prior suit to contend in this suit that it is not engaged in transportation within the meaning of the Act. The minority of the Court expressed the view that Appellee was not engaged in transportation within the contemplation of the Act and that it was not covered by the

Act. The majority expressed the view that Appellee's operations did amount to transportation within the meaning of the Act.

Even if it be assumed that the statement in the majority opinion, alluded to and relied upon by Appellants, is a statement which ordinarily would support an application of the principle of estoppel by judgment or collateral estoppel, though that appears doubtful under the opinion in *Commissioner* v. *Sunnen*, 333 U. S. 591, 599-600, it could not properly be applied here because this Court in the majority opinion in the prior suit expressly reserved judgment on the validity of such an order as that involved in this suit.

Justice Jackson in writing for the majority in the prior suit disclaimed any purpose or intent to hold that the Interstate Commerce Act gave the Commission power to convert Appellee's private pipe line into a common carrier; and said that what had been stated in the opinion afforded no support for such an implication. Further he said that Appellee's contention that the order there brought under review had the effect to take Appellee's property without due process was premature on the then record; that "so far" the Commission had not made any order "which changes the appellant's obligations to any other company or person". And, he added for the majority, that, when the Commission makes an order that has the effect to change Appellee's relation to others, "it will be timely to consider concrete requirements and their specific effect on appellant" (Appellee).

This suit presents to the Court the very issue upon which the Court so reserved judgment in the prior suit. The order challenged here has the effect to require Appellee to offer the services of its pipe line to the public and to make of its pipe line a common carrier for hire.

The Courts and the Commission recognize that to publish and file "tariff schedules showing the rates and charges for interstate transportation of refined petroleum products

between different points on its own route" would constitute an offer to the public to transport petroleum products upon the terms and at the rates and charges set forth in the schedule.

Commissioner Splawn, now Chairman of the Commission, in dissenting in part from the report here involved, correctly described in the following language (R. 151) the purpose of the majority of the Commission and the effect of the order:

> "The publishing of tariffs pursuant to the finding in this report will place upon Champlin the legal obligation to perform the transportation service specified in those tariffs, and to conform to the requirements of section 1(4) of the Act which provides that 'It shall be the duty of every common carrier subject to this part to provide and furnish transportation upon reasonable request therefor, and to establish reasonable through routes with other such carriers, and just and reasonable rates' etc."

Commissioner Mitchell, dissenting, said (R. 152):

> "To require that Champlin publish and file tariffs, with us can only be for one purpose viz: to make Champlin's pipe line available for use by all shippers. If that is not the purpose, then the requirement that tariffs be filed is an idle and futile gesture."

In the opinion below Judge Phillips said that if Appellee would publish and file tariffs as directed by the order "that would constitute an implied invitation to the public to tender petroleum products for transportation by Champlin's pipe line and would convert it from a carrier solely of its own products into a common carrier of products of others for hire."

This Court has consistently approached an order to file tariffs as involving the constitutional question as to whether a private carrier is thereby being converted into a common carrier. In *The Pipe Line Cases* (*Prairie Oil & Gas Company* v. *United States*, 204 Fed. 798), the Commerce Court

treated the order directing pipe line operators there involved to file "schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce" as an attempt to impose upon the parties there involved, against their will, the status of common carriers. Justice Holmes in the majority opinion in the appeal in that suit squarely decided the constitutional question by finding that since the Standard companies were common carriers in substance, the Congress had power to require them to become such in form, and consequently that the Act did not have the effect to convert them into common carriers,—they were already common carriers.

Producers Transportation Company v. *Railroad Commission*, 251 U. S. 228, and *Smith* v. *Cahoon*, 283 U. S. 553, 563, are cases which recognize the proposition that to require a private carrier to file schedules of rates and charges for transportation of commodities is, in effect, to call upon such private carrier to become a common carrier and devote its property to the use of the public.

Appellants recognize that the issue here is: Can the Interstate Commerce Commission lawfully force Appellee to operate its pipe line as a common carrier for hire? It so appears from pages 38-39 of Appellants' brief where, having said that an order to file a schedule of rates and charges was the action involved in *The Pipe Line Cases*, Appellants then said:

> "It is submitted therefore that it is appropriate for the Court to pass upon the question whether the due process limitations of the Fifth Amendment are violated if Champlin may be required, under any circumstances, to transport goods other than its own."

There is further reason why the judgment in the prior suit does not operate as an estoppel to bar Appellee's challenging the validity of the order involved in this suit. In the prior suit the United States and the Interstate Commerce Commission contended that there were significant

differences from the pipe line operations of the Uncle Sam Company involved in *The Pipe Line Cases*, 234 U. S. 548, 561-562. The differences which the United States and the Interstate Commerce Commission contended were significant and important to distinguish the two operations were (1) that Appellee's pipe line was used to transport "finished products", while the Uncle Sam Company used its pipe line to transport "raw materials" and (2) that Appellee used in its pricing formula what was called a "differential", which the United States and the Interstate Commerce Commission argued constituted a charge for transportation. (Pages 21-22, 24-25 of Brief for the United States and the Interstate Commerce Commission, *Champlin Refining Company* v. *United States*, 329 U. S. 29)

The majority of the Court in the opinion in the prior suit (329 U. S. 29, 33) was of the view that the "differential" pointed up a significant distinction between Appellee's operations there involved and the operations of the Uncle Sam Company involved in *The Pipe Line Cases*; and also gave significance, in distinguishing between the two operations, to the supposed fact that "manufacturing processes" had been completed.

Appellee abandoned the pricing formula which included the "differential" and adopted the practice of marketing its products on posted prices. Separate sets of prices are posted at each of the pipe line terminals. When competitive conditions require, allowances are made from these posted prices. The change to this method of pricing resulted in a price change varying from ⅛ cent to ½ cent per gallon at more than 70 per cent of the destinations served by Appellee out of its storage tanks at Superior and Rock Rapids. A change of ⅛ cent per gallon or more is recognized in the industry as substantial. (R., 33-34, 45, 116, 120-121) The abandonment of the pricing system that included the "differential" and the adoption of the system of selling on posted prices, therefore, effected a material change in Appellee's method of transacting its business.

The record in the prior suit was silent as to whether or not there were any further manufacturing processes after the products were placed in the pipe line. The facts in this particular have been developed in this record. The record shows that after the products come to rest in storage tanks at the pipe line terminals there is further blending and treating of some of the products, which blending and treating necessarily have an effect upon the quality of the products, and that at the time of the trial Appellee was constructing Ethyl plants at or near the Superior and Rock Rapids storage tanks for use in further treating for sale gasoline stored at those terminals (R., 42).

Appellants, having contended in the prior suit that the "differential" and the supposed shipping of only finished products were important factors, have now changed front. In an attempt to justify their claim of estoppel by judgment, they now contend that the abandonment of the "differential" was a change in form and not in substance, that the treating and blending of the gasoline do not effect a material change in the commodity and that these factors were not controlling in the prior suit: (Br., 21, 30, 34, 35)

The difference in the facts as shown by the record in the prior suit and the facts as shown by the record in this suit is on matters which were deemed of controlling importance in the prior suit. Hence Appellants' claim of estoppel by judgment cannot be urged successfully.

2. The Commission order involved in this suit is void because its enforcement would result in a taking of Appellee's property without due process of law.

The power delegated to Congress to regulate commerce among the several states is not an absolute power. It must be exercised in subjection to the Due Process Clause of the Fifth Amendment. (*Currin v. Wallace*, 306 U. S. 1; *The Pipe Line Cases*, 234 U. S. 548, 560-561, 563; *Railroad Retirement Board v. Alton RR. Co.*, 295 U. S. 330; *United States v. Chicago, Milwaukee, St. Paul & Pacific RR. Co.*,

282 U. S. 311; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447) The power granted to Congress is the power "to regulate commerce." Congress is without power "'to do anything about commerce which is not regulation.'"

In general the restraints imposed upon the Congress by the Due Process Clause of the Fifth Amendment are the same as the restraints imposed on the states by the Due Process Clause of the Fourteenth Amendment. (*Bowles, Price Administrator* v. *Willingham*, 321 U. S. 503, 518; *Hansberry et al.* v. *Lee et al.*, 311 U. S. 32, 42-44; *Curry* v. *McCanless*, 307 U. S. 357, 370; *Heiner* v. *Donnan*, 285 U. S. 312, 326; *Coolidge* v. *Long*, 282 U. S. 582, 596; *Nebbia* v. *New York*, 291 U. S. 502)

Because of the Due Process Clause of the Fourteenth Amendment, a state cannot "by mere legislative fiat or by any regulatory order of a commission convert into a public utility" a pipe line which has never been devoted by its owner to use by the public, "or make its owner a common carrier." (*Producers Transportation Company* v. *Railroad Commission of California*, 251 U. S. 228; *Michigan Public Utilities Commission* v. *Duke*, 266 U. S. 570; *Frost & Frost Trucking Company* v. *Railroad Commission of California*, 271 U. S. 583; *Washington ex rel. Stimson Lumber Co.* v. *Kuykendall et al.*, 275 U. S. 207; *Smith* v. *Cahoon, Sheriff*, 283 U. S. 553) The continuing force of the principle applied in the above cases was recognized by Mr. Justice Brandeis in writing for the full court in *Thompson* v. *Consolidated Gas Utilities Corporation*, 300 U. S. 55, 79. Appellants are obviously mistaken in their contention that this principle "is no longer controlling" upon the authority of the *Nebbia* case, 291 U. S. 502.

While a state may, in the reasonable exercise of the police power, regulate the operations of a private carrier for hire, it cannot, consistently with the Fourteenth Amendment, by legislative act, require a private carrier to become a common carrier. Any legislative requirement that such private carrier become a common carrier would amount to a pro-

hibited taking of property. (*Smith* v. *Cahoon, Sheriff, supra; Frost & Frost Trucking Company* v. *Railroad Commission of California, supra; Michigan Public Utilities Commission* v. *Duke, supra*)

Each of the cases cited in the preceding paragraph involve an attempt to impress a common carrier status on a for hire contract carrier. Appellee's line in this case is not engaged in transportation either as a common or contract carrier. It is engaged solely in the movement of Appellee-owned products from its refinery to its storage terminals along the line.

Again, where a pipe line owner uses its pipe line only to transport its gas to market, a state cannot require such pipe line owner to become a common carrier. (*Texoma Natural Gas Company* v. *Railroad Commission of Texas*, D. C., 59 Fed. (2d) 750, 753)

Because of the Due Process Clause of the Fifth Amendment, the Congress cannot by legislative act convert a private pipe line into a public utility, or require its owner to become a common carrier. (Chief Justice White's concurring opinion, *The Pipe Line Cases*, 234 U. S. 548, 562-563) The power to regulate commerce "cannot be made a means of exercising powers not entrusted to it (Congress) by the Constitution." (Mr. Justice Holmes' majority opinion, 234 U. S. 560-561) The power to require a private carrier to become a "common carrier" is withheld from Congress by the Fifth Amendment.

The Constitution protects a citizen in his right to move his property from one state to another by his privately owned and operated means. This right existed before the Constitution was adopted, and was not surrendered in the adoption of the Constitution. The right may be enjoyed by using the highways and privately owned and operated vehicles, or by purchasing a right of way and constructing and operating a private railroad or pipe line. (*Pennsylvania Railroad Company* v. *Public Utilities Commission of Ohio*, 298 U. S. 170) The exercise of the right may be reg-

ulated by Congress; but Congress cannot, under the guise of regulation, condition the exercise of the right upon the user's becoming a common carrier and making of his property a public utility. The power to regulate the exercise of a right does not include the power to take for a public use private property essential to the exercise of the right. "Conduct may be regulated which cannot be initially commanded * * *" (Mr. Justice McKenna's dissenting opinion in *The Pipe Line Cases*, 234 U. S. 565); and so, while Congress may regulate interstate commerce, Congress cannot command that a citizen engage in interstate commerce as a common carrier or otherwise. Any such attempt would necessarily involve an effort to take property without due process of law.

While contending that the parts of the order which, if enforced, would require Appellee to file "annual, periodical or specific reports" and "to institute and henceforth maintain a uniform system of accounts applicable to pipe lines" are not subject to attack on constitutional grounds, Appellants admit that the part of the order which requires the filing of schedules showing rates and charges for interstate transportation, "bears a close relation to the duty to furnish transportation to others upon reasonable request therefor" and say, in effect, that the question of whether the Due Process Clause of the Fifth Amendment would be violated if Appellee is required to transport petroleum products for others is before the Court for determination. (Br., 37-39)

Appellants divide the order into two parts and, conceding that the validity of the requirement to file schedules of rates and charges is open to debate, contend that the requirement to file reports and the requirement to institute and maintain a uniform system of accounts are separable from the balance of the order and are within the power of the Commission and are not subject to challenge upon constitutional grounds.

All of the requirements are set forth in one order. They are all founded upon the conclusion of the Commission that Appellee is a common carrier by pipe line, subject to all provisions of the Interstate Commerce Act relating to pipe lines engaged as common carriers for hire. The requirements to file reports and to institute and maintain a uniform system of accounts are predicated upon the Commission's assumption that Appellee is a common carrier by pipe line which the Commission lawfully can compel to file schedules of rates and charges. The reports which Appellee is directed to file and the system of accounting which Appellee is directed to install and maintain are such as are designed for common carriers for hire. (R., 357-483, 181-284) The provisions of the order directing Appellee to file reports and to institute and maintain the system of accounting is from the face of the record intended by the Commission to be effective upon Appellee's filing schedules of rates and charges and operating its pipe line as a common carrier for hire.

The order is one order. Its several parts are directed toward the common end of requiring Appellee to become a common carrier for hire and to do those things which the Commission can require of only common carriers.

In so far as the order of the Commission attempts to compel the Appellee to tender the use of its pipe line to the public, Appellants attempt to justify the order upon the propositions (1) that Appellee can protect itself against unreasonable tenders by imposing in its tariffs limitations and conditions; (2) that Appellee can charge compensatory rates for its services (Br., 39-40); and (3) that Appellee's pipe line was constructed subsequent to the enactment of the Hepburn Amendment. (Br., 40-42)

Any legislative act or administrative order which directs a person to devote his property to the demands and uses of the public is an attempt to take his property for the use of others. If such an order were effective, the owner would immediately lose the full right to personally use and enjoy

his property. Compensation for use of the property would not eliminate the element of taking. Compensation for use is not payment for property. Imposition upon an owner of a duty to share with others the use of his property is a taking of property. The fact that a program which involves such a taking may contemplate payment for the use of the property is not sufficient to justify the taking. It has never been held sufficient.

In *Associated Pipe Line Co.* v. *Railroad Com.*, 176 Cal. 518, 169 P. 62, 66, the Court said:

> "However this may be, and conceding the evidence ample to support the finding, such fact cannot warrant the taking of private property for public use without compensation for which no provision is made or contemplated. True, the exaction of tolls for actual service will be allowed, but there are elements of damage due to the subjection of the property to the public service not covered by charges for service performed for which no compensation is made. That subjecting petitioners' property to the use of the public as common carriers constitutes a taking of the same, admits of no controversy."

Construction of the pipe line was necessary to Appellee's continuance in business (R., 44); Appellee uses the entire capacity of its pipe line on a full-time basis in moving the products of its refinery to storage (R., 42); if Appellee were compelled to share its pipe line with its competitors they could make tenders to the extent that Appellee would be deprived of the necessary use of its line and thereby of its means of access to the markets upon which Appellee's continuing in business depends (R., 44, 46). Construction of additional facilities would be necessary to enable other refiners to make use of Appellee's line (R., 44). Obviously any order that compels Appellee to share its pipe line with other refiners will not only be a taking of Appellee's property for a public use in the sense that the pipe line will be subject to the use of Appellee's competitors, but if the opportunity is availed of by Ap-

pellee's competitors, they could, in effect, destroy Appellee's business. The oil business is a highly competitive one.

The pipe line here involved is not a separate entity. It is a facility of Appellee's refinery that connects its refinery with its storage tanks in areas where Appellee can market its products in open competition at prices that will enable Appellee to remain in business as a refiner of crude petroleum and a marketer of the products of crude petroleum. If Appellee is forced to open its pipe line to other refiners and they use the line, the resulting loss to Appellee's business will not be taken into account in rate making, and Appellee will suffer loss for which the law offers no compensation. The law's protection in such circumstances is found in the Fifth Amendment. It prohibits the taking.

The Government's economic theory

The Government's brief gives importance to the economic theory that inasmuch as Champlin has constructed an efficient means of transportation for its own use, it would be in the public interest to allow the public to seize it for the benefit of all competing refiners.

Quite aside from the constitutional prohibition of such seizure of private property, we submit that the Government's economic theory is entirely erroneous. The greatest public interest in the petroleum products market, is that freedom of competition between both large and small companies, be allowed to continue in order that the public may have the benefit of the lowest possible prices. Champlin and other small companies have had to build private pipe lines in order to be able to place their products on the market at prices which compete with the larger companies. If these companies are now compelled to submit to an appropriation of their pipe line capacity by these same large competitors, it would merely mean that these independents will be eliminated from the market. Champlin and other small

companies similarly situated would be back in the same position as they were when declining markets forced them to either build private pipe lines or withdraw from the market. Thus, the order of the Commission in this action, would have the very effect which the Supreme Court's order in the *Pipe Line Cases* was designed to prevent, that is, the fostering of a monopoly.

The future pipe line question

Finally, Appellants take one sentence in the opinion in *The Pipe Line Cases* out of context and attempt to find in it a refuge from the force of the Fifth Amendment. The sentence is emphasized in the following quoted part of the opinion:

> "The control of Congress over commerce among the States cannot be made a means of exercising powers not entrusted to it by the Constitution, but it may require those who are common carriers in substance to become so in form. *So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid.** So the objection is narrowed to the fact that it applies to lines already engaged in transportation. But, as we already have intimated, those lines that we are considering are common carriers now in everything but form. They carry everybody's oil to a market, although they compel outsiders to sell it before taking it into their pipes."

Appellants say (Br., 40-41) that Appellee's pipe line was constructed subsequent to enactment of the Hepburn Amendment (June 29, 1906) and that, therefore, the constitutional question as to the power of Congress to require it to operate as a common carrier was settled by the above emphasized sentence in the opinion in *The Pipe Line Cases*. The argument assumes that the sentence means what it does not mean.

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* Emphasis herein supplied.

Mr. Justice Holmes had found that the Amendment was directed at certain pipe line operations and that its evident purpose was "to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price",—pipe lines that were common carriers "in everything but form". The identity of the lines at which the Amendment was directed was well known (234 U. S. 559,—"* * * we think it plain that it was intended to reach the combination of pipe lines that we have described."). The constitutional question was whether Congress had power to regulate as common carriers pipe lines that in effect had been devoted by their owners to the use of the public and which, as operated, were common carriers in substance, though not common carriers in technical form as understood at common law. Could Congress under such circumstances, within the limits imposed upon its powers by the Fifth Amendment, require those pipe lines which were common carriers "in substance to become so in form"? The Court found that there was no prohibited taking of property in allowing the Amendment to have its intended application to such existing pipe lines.

The emphasized sentence amounts to nothing more than a statement that Congress could for the future require pipe lines which operate as common carriers in substance (like the pipe lines at which the Amendment was directed) to become common carriers in form. The effect of Appellants' argument is to urge that the sentence means that Congress may provide for the future that any pipe line built across a state line or any private facility which is used to move property across a state line must operate as a common carrier and may be regulated as such. So construed the emphasized sentence would mean that the constitutional right of a citizen to move his property by private means from one state to another can, under the Commerce Clause, be denied unless he agrees to operate as a common carrier in interstate commerce. That would amount to saying that the Commerce Clause overrides the Fifth Amendment.

The inclusion of the "future pipe lines" language as to "common carriers in substance" was not without purpose. In the next paragraph of the opinion Mr. Justice Holmes pointed out that Standard Oil Company of Louisiana, a common carrier in substance within the language of the opinion, was incorporated after the enactment of the Hepburn Amendment. But, it does not appear that Standard Oil Company of Louisiana was held subject to the Amendment on that basis. It was pointed out in both the majority opinion and the dissenting opinion that Standard Oil Company of Louisiana purchased oil from the Prairie which bought at the wells in the Mid-Continent area (Oklahoma and Kansas) and delivered to the Standard Oil Company of Louisiana; and, in stating that its case was covered by what had been said, it was evident that the Court had reference to what had been said about the operations of the other Standard companies.

It is significant that the record in respect to the Uncle Sam Oil Company showed that as late as the spring of 1906 the Uncle Sam Oil Company was applying for pipe line right of way in the Indian Territory; and it was stated in affidavits in the record in that case that on November 16, 1906, the pipe line was constructed and in full operation (Tr. of Record, *United States et al* v. *Uncle Sam Oil Company*, No. 507, October Term, 1913, pages 47-48; Record in *Champlin Refining Company* v. *United States et al*, 329 U. S. 29, Volume II, pages 611, 612, 614-615, 689). While it is not expressly stated in the affidavits that the pipe line began operations on November 16, 1906, such clearly appears to be the date such line was put into operation. The Hepburn Amendment was approved June 29, 1906. So, if the affidavits which appeared in the record in the Uncle Sam Oil Company case are correctly interpreted, the Uncle Sam pipe line was "a future pipe line", but its case was not disposed of upon that theory.

Appellants also rely upon *Pierce Oil Corporation* v. *Phoenix Refining Company* 259 U. S. 125. Again Appel-

lants quote sentences and part sentences from the opinion. (Br., 40-42) In the following quotation from the opinion, Appellants' partial quotations are italicized; asterisks indicate only an omission of citations:

> "When the large discretion which the state had to impose terms upon this foreign corporation as a condition of permitting it to engage in wholly intra-state business is considered * * *, *the contention that this order of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law, must be pronounced futile to the point almost of being frivolous.* 'By accepting the privilege it voluntarily consented to be bound by the conditions' attached to it * * *; and, while enjoying the benefits of that privilege, it will not be heard to complain that an order, plainly within the scope of statutes in effect when it entered the state, is unconstitutional. *A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in the Pipe Line Cases * * *, in a single sentence, saying: So far as the statute contemplates future pipe lines, and prescribes conditions under which they may be established, there can be no doubt that it is valid.*" (259 U. S. 128)

On the basis of the italicized portion of the quotation, Appellants argue (Br., 42):

> "The above decision was not rested, even in part, on the proposition that one who has benefited from privileges conferred by statute may not attack its constitutionality. No reference is made in the court's opinion to any benefits derived by Pierce Oil from privileges conferred by the Oklahoma pipe line statutes."

From the above full quotation it is apparent that Appellants have misconceived the basis for the decision in the *Pierce Oil* case. The language of the opinion which is not italicized expressly grounds the opinion on the accept-

ance of privileges and benefits afforded by the Oklahoma Constitution and statutes. Further, the facts involved support this construction of the opinion. As a condition to the privilege of admission as a foreign corporation in the State of Oklahoma, Pierce filed a formal acceptance of the provisions of the Oklahoma Act which required it to become a common carrier (intrastate). As pointed out in the Oklahoma Supreme Court opinion (*Pierce Oil Corporation* v. *Phoenix Refining Company*, 79 Okla. 36, 190 P. 857, 859), Pierce received the benefits of rights relating to the highways and rights under and by virtue of other sections of the statute. As found by the Oklahoma Corporation Commission and confirmed by the Oklahoma Supreme Court (see 259 U. S. 126), Pierce had engaged in transportation for others, had a monopoly of the oil carrying business between the Cushing Field and Sand Springs, and was in substance a common carrier. The *Pierce* case has never been cited for the proposition contended for by Appellants; it has consistently been cited for the proposition that one who avails himself of the benefits of a statute cannot attack its validity (*Buck* v. *Kuykendall*, 267 U. S. 307; *Spaulding* v. *Douglas Aircraft Co., Inc.*, (C. C. A. 9th), 154 F. (2d) 419; *Central Nebraska Public Power & Irr. Dist.* v. *Federal Power Commission*, (C. C. A. 8th), 160 F. (2d) 782).

In this case there are no elements of estoppel. Appellee has received no benefits from the Act. Indeed, the Interstate Commerce Act does not purport to confer benefits; it only imposes burdens. It is purely a regulatory measure. Instead of claiming anything under the Act, Appellee has at all times consistently asserted that the Act has no application to its business.

Frost v. *Railroad Commission of the State of California*, 271 U. S. 583 (a future motor carrier case), was decided after *The Pipe Line Cases* and the *Phoenix* case. Frost was engaged in transportation solely as a private contract carrier under a contract dated December 14, 1923. (Record, *Frost* v. *Railroad Commission*, pages 15, 21, 28, October

Term, 1925) The California Act involved had been amended in 1919 so as to bring within its coverage private contract carriers operating between fixed terminals. The order under review directed Frost to cease transportation by auto truck over a certain route until it obtained from the California Railroad Commission a certificate of public convenience and necessity. The California Supreme Court found the order constitutional. It considered *Michigan Public Utilities Commission* v. *Duke*, 266 U. S. 570, which held that a private carrier could not be constitutionally converted into a common carrier, inapplicable because:

> "If the contracts under which petitioners herein are operating had been entered into prior to the enactment of the 1919 amendment to our statute, and had been then subsisting and unperform[illegible] petitioners would have been in position to invoke [illegible]e authority of the Duke case. But petitioners' contract was not made until 1923, and they were under no compulsion to enter into it. They were free to elect as to whether they would engage in the business of transportation upon the public highways between fixed termini or over a regular route and thus subject themselves to the conditions and limitations of the statute, or whether they would refrain from so doing and thus retain their status of unregulated private carriers. They voluntarily chose the former course and thereby subjected themselves to the regulations imposed by the statute." (240 P. 30)

This Court, however was of the view that, as the effect of the California Act was to require Frost to operate as a common carrier, the Act as so applied was unconstitutional. This Court recognized that the only substantial question involved was whether the State could effect this unconstitutional result as a condition to the use of the highways by Frost. In that connection this Court said:

> "There is involved in the inquiry not a single power, but two distinct powers. One of these—the power to prohibit the use of the public highways in proper cases—the state possesses; and the other—the power

to compel a private carrier to assume against his will the duties and burdens of a common carrier—the state does not possess. It is clear that any attempt to exert the latter, separately and substantively, must fall before the paramount authority of the Constitution. May it stand in the conditional form in which it is here made? If so, constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect but no less effective process of requiring a surrender, which, though, in form voluntary, in fact lacks none of the elements of compulsion. Having regard to form alone, the act here is an offer to the private carrier of a privilege, which the state may grant or deny, upon a condition, which the carrier is free to accept or reject. In reality, the carrier is given no choice, except a choice between the rock and the whirlpool,—an option to forego a privilege which may be vital to his livelihood or submit to a requirement which may constitute an intolerable burden." (271 U. S. 593)

Mr. Justice Holmes, in his dissenting opinion in the *Frost* case, found only that California had the right to require a certificate of public convenience and necessity from a private carrier using its highways. In no place in his dissent did he indicate that the case should have been simply disposed of on the ground that the carrier involved was estopped from raising the constitutional issue because it was a "future motor carrier". To the contrary, he said: "I see nothing in this Act that would require private carriers to become public carriers * * *."

If requiring a "future" for hire contract carrier to become a common carrier as a condition to the use of the state's highways is prohibited by the Constitution, clearly requiring a "future" strictly private pipe line to become a common carrier where it had neither sought nor received any public privileges or benefits in relation to its operations, would be offensive to the Fifth Amendment. The latter principle was recognized by Mr. Justice Holmes in opinions written by him subsequent to the date of the opinion in *The Pipe Line Cases.*

Fidelity & Deposit Co. v. *Tafoya*, 270 U. S. 426, involved the question of the right of a state to refuse to admit a foreign corporation to do business within its borders. It was held that while the state may for any reason, or no reason, refuse the right to enter such state, such refusal cannot be conditioned upon such corporation's agreement to forego a constitutional right. Mr. Justice Holmes (270 U. S. 434), in the opinion, said:

> "Coming then to the merits, we assume in favor of the defendants that the State has the power and constitutional right arbitrarily to exclude the plaintiff without other reason than that such is its will. But it has been held a great many times that the most absolute seeming rights are qualified, and in some circumstances become wrong. One of the most frequently recurring instances is when the so-called right is used as part of a scheme to accomplish a forbidden result."

Western Union Telegraph Company et al. v. *Foster and Macleod et al.*, 247 U. S. 105, involved the validity of a state commission order requiring the sale of information to a particular person. The information was purchased by the telegraph company from the stock exchange and transmitted to other states and sold by the telegraph company. In that case the Court, in an opinion by Mr. Justice Holmes, said (247 U. S. 114):

> • • • "It is suggested that the state gets the power from its power over the streets which it is necessary for the telegraph to cross. But if we assume that the plaintiffs in error under their present charters could be excluded from the streets, the consequence would not follow. Acts generally lawful may become unlawful when done to accomplish an unlawful end, • • • and a constitutional power cannot be used by way of condition to attain an unconstitutional result."

Appellants further contend that Part II (motor carrier) and Part III (water carrier) of the Interstate Commerce Act sustain their argument that the application of Part I

to a "future pipe line company" would not be unconstitutional. This argument is based upon the premise that the constitutionality of Parts II and III has never been challenged in so far as they require a contract-carrier for hire to obtain a permit, which can be refused on the basis that the issuance of the permit would not be in the public interest. This argument is unsound for the reason that the very Acts involved specifically safeguard the constitutional principles for which Appellee now contends, in that they both recognize that "private carriage" within one's own business cannot and should not be brought within the orbit of public regulation.

3. The Interstate Commerce Act is directed only at persons and corporations engaged as common carriers for hire; and if it were construed to reach Appellee's pine line operations and to empower the Commission to promulgate and enforce the order here involved, the Act, so construed, would be invalid

It should not be supposed, that the principle upon which this Court refused to hold the operations of the Uncle Sam Oil Company within the reach of the Hepburn Amendment applies only to persons and corporations whose operations are in substance identical with those of the Uncle Sam Oil Company involved in *The Pipe Line Cases*.

The Standard Oil Company and its affiliates were engaged in affording to producers generally a means of transporting their oil. The operations of the Uncle Sam Oil Company were purely private in nature. One was public carriage; the other was private movement by an owner of its property. The Court construed the Hepburn Amendment as giving evidence that Congress recognized the distinction between public carriage of oil by pipe line and an owner moving its oil by its private pipe line, and saw in the amendment a purpose upon the part of Congress to subject to the regulations provided in the Act to Regulate Commerce only those engaged in public transportation by

pipe line. Considerations of constitutional limitations upon the power of Congres may or may not have had a bearing upon the construction so given the amendment. Be that as it may, the basis upon which the Uncle Sam Company's operations were held not to be within the reach of the Act was that the Uncle Sam Company was engaged in moving only its own property. It was not engaged in public transportation.

The Court found that the difference between public transportation and private carriage by an owner of its property was recognized in the Amendment, and effect was given to such difference in *The Pipe Line Cases.* Later cases appear to have given this interpretation to the opinion in *The Pipe Line Cases.* (*Producers Transportation Co.* v. *RR. Com.*, 251 U. S. 228; *Penn. RR. Co.* v. *P. U. C.*, 298 U. S. 170; *Associated Pipe Line Co.* v. *RR. Com.*, 169 P. 62; *Penn. RR. Co.* v. *Pittsburgh, L. & W. R. Co.*, 83 F. (2d) 861; *Smitherman & McDonald* v. *Mansfield Hard Lbr. Co.*, 6 F. (2d) 29; *Dairymen's Co-op Sales Assn.* v. *P. U. C.*, 177 Atl. 770; *Weisberger* v. *Penn. P.U.C.*, 7 Atl. (2d) 731; *Clear Creek Oil & Gas Co.* v. *Ft. Smith Spelter Co.*, 230 S. W. 897; *Schumacher* v. *RR. Com.*, 201 N. W. 241) If Appellee should be held, notwithstanding the private nature of its pipe line operations, to be subject to the Interstate Commerce Act and required to file schedules of rates and charges, it would be the only purely private carrier ever to have been stripped of the private nature of its business by legislative act or administrative order, and made to become a common carrier for hire.

The Hepburn Amendment (34 Stat. 584), in so far as it pertains to transportation of oil by pipe line, is printed in the Appendix, pages 70-73. The language of the amendment which is of importance here is as follows:

> "That the provisions of this Act shall apply to *any corporation or any person or persons engaged in the transportation of oil or other commodity*, except water and except natural or artificial gas, *by means of pipe*

lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, *who shall be considered and held to be common carriers within the meaning and purpose of this Act*, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States, or the District of Columbia, to any other state or territory of the United States, or the District of Columbia * * *." (Italics ours)

The amendment of 1920 (41 Stat. 474-478, 49 U.S.C., Sec. 1), in so far as it pertains to transportation of oil by pipe line, is printed in the Appendix, pages 73-76. The language of importance here is as follows:

"(1) That the provisions of this Act shall apply to common carriers engaged in * * *

"(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; * * *

"(3) The term 'common carrier' as used in this Act shall include all pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping car companies; and all persons natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire."

By later amendments (48 Stat. 1102, 49 Stat. 543, 54 Stat. 899, U.S.C., Title 49, Sec. 1, and 62 Stat. 602) the part of sub-paragraph (3) of Section 1, last quoted above, was changed so that it now reads as follows:

"The term 'common carrier' as used in this Act shall include all pipe line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Whenever the word 'car-

rier' is used in this chapter it shall be held to mean 'common carrier.'"

Postponing for later further consideration the contention made by the Government that the Hepburn Amendment, as enacted and as amended, brought within the reach of the Act all interstate pipe lines, it will be now shown that Appellee's pipe line operations are not within the coverage of the Act because Appellee is not engaged in "transportation" within the meaning of the Act.

(a) The Original Act to Regulate Commerce

Section 1 (see Appendix, page 69) of the original statute (An Act to Regulate Commerce, Act of February 4, 1887, 24 Stat. 379) provided:

> "That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment * * * ."

The purpose of the statute was to prohibit rebates, discriminations and other abuses by common carriers, to require that they establish and post rates, fares and charges, and to prohibit their charging unjust or unreasonable rates. (*Interstate Commerce Commission* v. *Baltimore and Ohio Railroad Company*, 145 U. S. 263). The statute was directed at common carriers.

It is obvious from the very language of the Act that the term "transportation" was used to describe interstate transportation by persons engaged as carriers of passengers and as carriers of property for others. There is an absence of any language indicating a different intent. The use of the term "transportation of passengers" would make this conclusion inescapable even if the term "common carrier" did not appear in the text of the statute.

One does not transport himself as a passenger. If the term "transportation" had been used to include the movement by a person of his own property from one state to another by use of his own private means, the statute would then have had the effect of subjecting such person and his property to the burdens, duties and regulations imposed by the statute. So construed, the statute would have been in conflict with the Due Process Clause of the Fifth Amendment. (Chief Justice White's concurring opinion in *The Pipe Line Cases,* 234 U. S. 548, 562-563; *Smith* v. *Cahoon, Sheriff,* 283 U. S. 553; *Frost & Frost Trucking Co.* v. *Railroad Commission of California,* 271 U. S. 583; *Stimson Lumber Company* v. *Kuykendall,* 275 U. S. 207, 210; *Michigan Public Utilities Commission et al.* v. *Duke,* 266 U. S. 570; *Producers Transportation Company* v. *Railroad Commission of California,* 251 U. S. 228).

(b) The Hepburn Amendment of 1906

The language which appeared in the original statute of 1887, *supra,* which was carried forward in the Hepburn Amendment (34 Stat. 584), is italicized in the following quotation from section 1 of the Hepburn Amendment:

> "That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any *common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment)* * * *."

The word "transportation" was used a number of times in the original statute. There is no language or expression

in the original statute (24 Stat. 379) to indicate that the term was there used in different senses in different instances. In the absence of expressions indicating a contrary intent, it will be presumed that the word was used in the same sense in each instance. (*United States* v. *Cooper Corporation*, 312 U. S. 600, 607). It has never been supposed that it was used in the original Act in any other sense than to refer to transportation of and for others than the carrier.

The term "transportation" was also used a number of times in the Hepburn Amendment, and it is to be presumed that it was there used in each instance in the same sense, and in the sense in which it was used in the original Act, unless a contrary intent appears. Words and provisions used in an original statute and repeated in an amendment will be presumed to be used in the amendment in the same sense in which they had been used in the original statute, unless there is some expression to indicate a contrary intent. Provisions of a prior statute, in so far as they are reproduced in an amendment, are to be construed as a continuation of the provisions of the prior law and not as a new enactment. (*Posadas, Collector,* v. *National City Bank*, 296 U. S. 497, 505; *Anderson* v. *Pacific Coast Steamship Co.*, 225 U. S. 187).

The language of the original statute does not leave any uncertainty or ambiguity concerning the sense in which the term "transportation" was used. It is clear that the term was used to describe the business of those engaged in transporting passengers and in carrying property for others. Used, as the term was, in the Hepburn Amendment in the same connections as it had been used in the original statute, and the Hepburn Amendment having the same general purposes as the original statute, the term should be treated as having the same meaning in the amendment that it had in the original statute.

The term "railroad" was used repeatedly both in the original statute and the Hepburn Amendment. There is

no language in either the original statute or the amendment to suggest that the Congress had in mind any type of railroad operation except railroads engaged in interstate transportation of passengers and in carriage of property for others. In the more than half century that has passed since the original enactment of the statute, and in the legion of cases involving its meaning and application, never, so far as Appellee is advised, has it been held that it applies to any character of railroad except railroads engaged in business as common carriers for hire, and the fourth and fifth paragraphs of section 1 of the Act show that it was directed at these railroads and none other.

This court has expressly held that the Act does not apply to a private, interstate railroad engaged in transporting only the property of the owner of the railroad. (*Pennsylvania Railroad Company* v. *Public Utilities Commission of Ohio*, 298 U. S. 170.)

In the Hepburn Amendment, interstate transportation of oil by pipe line was brought into the Interstate Commerce Act. In the very clause which so extended the Act it was provided that the Act should apply to "persons engaged in transportation of oil * * * by means of pipe lines, or partly by pipe lines and partly by railroad." The term "railroad" was evidently used in that clause in the same sense in which it was used in other clauses in the original statute and in other clauses in the Hepburn Amendment; that is, as descriptive of railroads engaged in carriage of property for others. Certainly the Congress did not intend in this same clause to refer to pipe lines used exclusively by the owner thereof to move such owner's oil as an incident to another business, and to tie that movement to a further transportation of the oil by common carrier railroad. Congress was speaking of transportation of oil by pipe line carrier engaged in carriage for others and of that type of transportation connected with further transportation by common carrier railroad.

(c) The Amendment of 1920 to the Interstate Commerce Act

In the Amendment of 1920 (41 Stat. 474-478, see Appendix, pages 73-76) there was some change in the language of section 1 of the Interstate Commerce Act, as amended by the Hepburn Amendment (34 Stat. 584; see Appendix, pages 70-73), but this Court has held there was no change in meaning.

In the following quotation from section 1 of the Act, as amended in 1920, the language which was carried forward from the Hepburn Amendment is italicized:

> "(1) *That the provisions of this Act shall apply to* common carriers *engaged* in—
>
> (a) *The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment;* or
>
> (b) *The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or*
>
> (c) The transmission of intelligence by wire or wireless:— • • •
>
> (2) • • •
>
> (3) The term 'common carrier' as used in this Act shall include all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies, sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. Wherever the word 'carrier' is used in this Act it shall be held to mean 'common carrier.'"

Consistent with the above-stated rules of construction, the Court, in *Valvoline Oil Company* v. *United States et al.*, 308 U. S. 141, 145, in speaking of the change of language in the Amendment of 1920, said: "In the present Act there is a change of language, but we perceive none in meaning."

The term "transportation," then, when used in the 1920 Amendment, has the same meaning as it had when it was used in the original Act and in the Hepburn Amendment.

If there was ever any uncertainty concerning the meaning of the term "transportation," as used in the Interstate Commerce Act as originally enacted and as amended in 1906 and in 1920, the meaning of the term has been made certain by the opinions of the Supreme Court. The following opinions warrant the statement that the term "transportation" refers to and is descriptive only of interstate carriage by persons engaged as carriers for others.

(1) *The Pipe Line Cases*

The holding in *The Pipe Line Cases*, 234 U. S. 548, that the Hepburn Amendment brought within the reach of the Interstate Commerce Act the pipe line operations of the Standard Oil Company and its affiliates, but not the operations of the Uncle Sam Oil Company, was founded upon the conclusion that the "transportation" by the Standard Oil Company and its affiliates was for others, while the exception of the Uncle Sam Oil Company from the order reversing the decree of the Commerce Court (*Prairie Oil and Gas Company* v. *United States*, 204 Fed. 798) was founded upon the fact that the "transportation" by that company, while interstate in character, was of the oil of the owner of the pipe line.

The opinion in the *Pipe Line Cases* and the current history make clear that the Hepburn Amendment was directed at the pipe line operations of the Standard Oil Company and its affiliate. They had control of the only practical means of oil transportation between the Rocky Mountains and the Atlantic seaboard. They made use of their monopoly of this means of transportation to refuse to carry oil through their pipe lines unless the producers of the oil would sell their oil to the pipe line owners at the latter's price. They carried "everybody's oil," although they compelled "outsiders to sell it before taking it into their pipes." The operations of these companies were found to

be such that the companies were "common carriers now in everything but form." In substance and effect, they were furnishing a means of transportation for others. They were "not technically common carriers yet (they) were carrying all oil offered, if only the offerers would sell at their price." They were common carriers in substance and the Court held that the Congress had power to require them to become common carriers in form (234 U. S. 561).

The Uncle Sam Oil Company's pipe line was used exclusively to transport the oil of that company from its wells in one state to its refinery in another state. The product "when reduced at the refinery passes into the markets of consumption." (Chief Justice White's concurring opinion, 234 U. S. 562). The question presented as to that company was whether or not such a pipe line operation was "transportation" within the meaning of the term as used in the Hepburn Amendment. On this subject the Court, speaking through Mr. Justice Holmes, said (234 U. S. 562).

> "It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, *we do not regard it as falling within the description of the Act*, the transportation being merely an incident to use at the end." (Italics ours)

Chief Justice White did not agree with the majority in the conclusion that the Uncle Sam Oil Company's pipe line operations did not constitute "transportation" within the meaning of the statute, but based his concurrence in the holding as to that company on the ground that "it would be impossible to make the statute applicable to it (Uncle Sam Oil Company) without violating the Due Process Clause of the Fifth Amendment, since to apply it would necessarily amount to a taking of the property of the company without compensation" (234 U. S. 563).

It does not make any difference whether the view of the majority or the view of the Chief Justice is accepted, for the effect of each is that the Hepburn Amendment did not bring within the reach of the Interstate Commerce Act a pipe line used exclusively in moving the oil of the pipe line owner from one state to another as an incident to the pipe line owner's business of producing and refining crude petroleum and marketing the refined products thereof,—and that is the business that Appellee conducts. It is not important which view is accepted; the view of the majority was that the Hepburn Amendment was not intended to reach a private pipe line used only by its owner; the view of the Chief Justice was that the private line was not reached because to so construe the statute would be to bring it in conflict with the Fifth Amendment. Both views reach the same end,—private carriage is not covered.

(2) *The Valvoline Case*

Valvoline Oil Company v. *United States, et al.*, 308 U. S. 141, is the only case involving pipe line transportation which has been decided by the Supreme Court under the Interstate Commerce Act, as amended in 1920, except the prior *Champlin* case. Valvoline Oil Company was engaged in operating 1,426 miles of pipe line connected with 9,020 wells in Pennsylvania, Ohio and West Virginia. It purchased oil at the wells from the well owners, using a part of it to manufacture products sold by Valvoline and selling a part of it to other refiners in Pennsylvania and West Virginia. However, none of the oil so sold to others was produced outside of the state in which the purchasing refiners were located. Valvoline said in its brief in the Supreme Court that the wells served by its pipe line were "stripper wells scattered over Western Pennsylvania, West Virginia and a small part of Ohio," and that "these wells are so small that common carriers cannot afford to construct, maintain and operate lines for transportation of oil in such small quantities". In those words Valvoline

admitted itself out of Court. The inference to be drawn from them was that, as to wells served by its pipe line, Valvoline had a monopoly of the only practical means of transportation, as had been true of the Standard Oil Company and its affiliates in *The Pipe Line Cases*. Valvoline was engaged in purchasing oil from many sources and transporting it by pipe line. The facts in respect to Valvoline's pipe line operations in their essentials were like the facts in respect to the pipe line operations of the Standard Oil Company and affiliates in *The Pipe Line Cases*. The only difference was one of degree, which was regarded by this Court as "immaterial" (308 U. S. 147). In holding Valvoline under the Act, this Court said "* * * *it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.*" The carriage by Valvoline, like the carriage by the Standard Oil Company and its affiliates, was in substance and effect for others; and was, therefore, transportation within the meaning of the Act.

In the *Valvoline* case this Court approved the holding in *The Pipe Line Cases* as to the pipe line operations of the Uncle Sam Oil Company, saying (308 U. S. 146): "This was held not to be transportation under the Act."

The *Valvoline Case* was decided upon the same principles upon which it had been held in *The Pipe Line Cases* that the pipe line operations of the Standard Oil Company and its affiliates were under the Act. In both instances the carriage involved was in substance and effect carriage of all oil offered, if only the owner would sell to the pipe line.

(3) *The Pennsylvania Railroad Company Case*

In *Pennsylvania Railroad Company* v. *Public Utilities Commission of Ohio*, 298 U. S. 170, the issue was whether intrastate rates applied to switching and delivering four carloads of coal in Youngstown, Ohio, or whether the charge should be based on the interstate rates from the mines to the point of delivery. Pittsburgh Coal Company operated

coal mines in Pennsylvania and by means of its private barges and privately owned and operated railroad moved the coal from its mines in Pennsylvania to its cleaning and sizing plant near Negley, Ohio. After being cleaned and sized at the plant near Negley, Ohio, the cars of coal were shipped by common carrier for delivery to consignees in Youngstown, Ohio. Up to the sizing plant the carriage was solely by the Pittsburgh Coal Company's own facilities, but it was an interstate movement and the coal was on the way to market. The Pennsylvania Railroad Company and the Erie Railroad Company contended that the local or intrastate rates for switching and delivering cars in Youngstown should not be applied for that service, but that the charge should be made upon the basis of interstate rates from mines to destination. The Court, speaking through Mr. Justice Cardozo, said (298 U. S. 175):

> "The only transportation of this coal by a common carrier of merchandise either by railroad or by water was intrastate transportation in Ohio between Negley and Youngstown. The transportation between Pennsylvania and Ohio was by the owner, who was not a common carrier, but furnished implements of carriage for its own use exclusively. Appellants would have us hold that this interstate transportation by an owner who does not carry for anyone else will be tacked to the intrastate transportation by railroads who are in business as common carriers, and the movement thus consolidated brought within the statute. The statute and the decisions as we read them forbid this unifying process."

In illustrating the consequence of such a construction of the Interstate Commerce Act, as appellants urged in that case, the Court further said (298 U. S. 176-177):

> "The situation laid before us would not be changed in its essentials if a cooperative association of farmers doing business in Pennsylvania close to the state line were to use a fleet of trucks belonging to the association or its members to carry milk or vegetables from

> Pennsylvania to a railroad station in Ohio. Even though this were done systematically and not casually or in sporadic instances, the ensuing transportation by rail, if kept within Ohio, would not be transportation between the states within the meaning of the Act of Congress."

In that case this Court made clear that the term "transportation" as used in section 1 of the Interstate Commerce Act as it exists today means transportation by persons engaged as carriers for others, and that it does not include the movement of property from one state to another by the owner through the use of his own railroad or pipe line. The Court also made clear that even though such private transportation by an owner of his property or products is *for the purpose of reaching markets, nevertheless* the movement is not "transportation" within the meaning of the Interstate Commerce Act.

Elsewhere in the opinion, this Court gave further evidence of its conviction that the Act is not directed at an owner's interstate movement of his own property or products by his own private means. The Court said (298 U. S. 174):

> "The Interstate Commerce Act (49 U. S. C. Sec. 1 et seq.) *is aimed at common carriers exclusively*, sec. 1 (1), (3), and not even at all these." (Italics ours)

The cases compel the conclusion that Appellee's pipe line operations are not "transportation" within the meaning of the Act. In the cases cited and discussed above, this Court impressed upon the term "transportation" as used in the Interstate Commerce Act the meaning of carriage between states of passengers and property for others. Stability of judicial decision argues strongly, if it does not demand, that a meaning which has stood so long should not now be changed unless the former holdings can be shown clearly to be wrong.

Appellants point out that in *The Pipe Line Cases* and the *Valvoline* case the pipe line operators were carrying only their own oil, and say that the statute clearly applied to "companies such as those which, prior to the legislative Act, had refused to carry oil for others". (Br. 23, 24, 25, 26, 27) And, thus they argue that the statute was intended to apply; and applies under the decisions of this Court, to those who carry only their own oil. This argument completely leaps over the bases upon which the Standard Oil Company and its affiliates and the Valvoline Company were held under the Act.

(d) The fact that Appellee uses its pipe line to move its products to market does not bring such operations within the meaning of the term "transportation" as used in the act

Appellants argue that since Appellee is moving its products to market, the pipe line operation is subject to the Act. They point out that such was the end served by the lines of Standard Oil Company and its affiliates in *The Pipe Line Cases*, and say that Congress brought pipe lines under the Act to make the low cost means of transportation available to others than the pipe line owners; that the purpose of the pipe line provisions of the Act was to bar pipe line owners of a monopoly of their means of transportation (Br., 28). Appellee does not have a monopoly of means of transportation or of markets (R. 45-47).

This Court has had opportunity to say that such a fact would justify calling upon a pipe line owner to become a common carrier for hire and also to give the fact of movement to market significant importance in determining that the pipe line is under the Act. It has never made the fact of movement to market a cause either to justify calling upon a pipe line to act as a common carrier for hire or to hold a pipe line operation under the Act.

The Uncle Sam Oil Company's pipe line was used to move its oil from its wells to its refinery, "and the product of course when reduced at the refinery passes (passed)

into the markets of consumption". (Concurring opinion of Chief Justice White, 234 U. S. 562)

Certainly, there is no such difference between the movement of oil from field to refinery by means of a private pipe line as a step toward marketing products, and the movement of oil products from refinery to storage near market centers by means of private pipe line as a further step toward marketing the products, as to justify the assumption that Congress did not intend to include the first movement within the terms of the Act, but did intend to include the second movement.

There is an utter absence of language which would suggest that Congress intended the purpose of the movement to be a factor for determining what is "transportation" within the Act and what is "private transportation" not within the Act. The Standard Oil Company and its affiliates and Valvoline Oil Company were engaged in moving oil from the fields to refineries with a view that the refined products would reach the markets. The Uncle Sam Oil Company was moving its crude oil for the ultimate purpose of selling the products thereof. (See concurring opinion Chief Justice White in *The Pipe Line Cases.*) The operations of the Standard Oil Company and its affiliates and of the Valvoline Oil Company were held under the Act, the operations of the Uncle Sam Oil Company were held not within the reach of the Act, yet each was engaged in moving oil with the ultimate view of marketing the refined products. The fact that the oil was being moved toward market apparently was not a factor in determining the applicability of the Act to any of these companies.

In the *Valvoline* case this Court, in speaking of the operations of the Standard Oil Company and its affiliates, said (308 U. S. 144, 145):

> * * * "Whether the oil so owned and transported was ultimately used by the carrier in its own operations *or sold to others was in this connection immaterial.*" (Italics ours)

Again, the Pittsburgh Coal Company was using its facilities to move its coal "to market for sale to the public," but that fact was not sufficient to bring its operations within the coverage of the Interstate Commerce Act.

Thus it appears that the fact of movement of a commodity to market is not a factor in determining the applicability of the statute.

Obviously the purpose of the Interstate Commerce Act is to regulate the transportation business of those who enter into engagements to transport property for others or to transport passengers, to reach and regulate the transportation business of those who sustain toward others the relation of carrier of property to shipper, or of carrier to passenger. That such is the purpose and object of the Act is clear from the language in which it is cast. The movement of property or products to market by means of railroad or pipe line, standing alone, is not sufficient to bring the movement within the meaning of the term "transportation" as used in the Act. The element of carriage for others is essential to the "transportation" covered by the Act.

Appellee's pipe line is used only for the transportation of refined products. Obviously no one can have any interest in such products that would call for regulation of the pipe line or the posting of rates and charges.

(e) The Interstate Commerce Act does not have the effect to make all interstate pipe lines common carriers under the Act

Appellants speak of the all inclusiveness of the term "all pipe line companies." (Br., 23) Appellants would give the words a literal meaning.

To construe the Interstate Commerce Act to make common carriers of all interstate pipe lines, would be (1) to give the Act a breadth of meaning and effect which this Court has three times refused to give it; (2) to fail to take into account the sense in which the term "transportation" is used in the Act; and (3) to neglect to give proper con-

sideration to the limitations which the Fifth Amendment imposes on the power of Congress to take private property for a public use.

In *The Pipe Line Cases*, 234 U. S. 548, and in the *Valvoline case*, 308 U. S. 141, the United States and the Interstate Commerce Commission urged the Court to hold that the Act makes common carriers of all interstate pipe lines.

In the opening sentence upon the first point in the brief for the United States in *The Pipe Line Cases* it was contended that:

> "Congress deliberately intended the act to apply to every interstate pipe line. It intended to compel every interstate pipe line to become a common carrier as a condition precedent to engaging in interstate commerce. Whether any particular pipe line had or had not been a common carrier prior to the passage of the act is wholly immaterial."

The foregoing contention of the Government is stated in the summary of briefs in *The Pipe Line Cases* (234 U. S. 549) as follows:

> * * * "Congress intended the Act to apply to every interstate oil-carrying pipe line and to compel every such interstate pipe line to become a common carrier as a condition precedent to engaging in interstate commerce."

In *Prairie Oil & Gas Co.* v. *United States*, 204 Fed. 798, the Commerce Court held that the Hepburn Amendment had the effect to make all interstate pipe lines common carriers. In holding that the operations of the Uncle Sam Oil Company were not within the coverage of the Act, this Court overruled such holding of the Commerce Court and rejected the Government's contention that "Congress intended the Act to apply to every interstate oil-carrying pipe line and to compel every such interstate pipe line to become a common carrier as a condition precedent to engaging in interstate commerce."

When Mr. Justice Holmes in writing his opinion in *The Pipe Line Cases* came to the problem of determining the limits of the Hepburn Amendment as it related to pipe lines, he had before him as litigants a company whose pipe line operations were strictly private in nature and other companies which were in point of fact monopolizing the only practical means of transporting oil to market and were making use of their monopoly of this means of transportation to force producers to sell their oil to the pipe lines. He could find in the operations of these latter companies not only the semblance but the substance of common carriers. They were carrying all oil to market if the owners would sell to them. In reality, these companies were furnishing to others a means of transportation. He was able to find in the Commerce Clause power to compel those who were common carriers in substance to become so in form; and in the words of the Act he was able to find that Congress had adopted the Hepburn Amendment with just such an intent; but he was not able to find in the Act any intent upon the part of Congress to compel private carriers to become common carriers.

Certainly if the facts with respect to the operations of Standard Oil Company and its affiliates are taken as the measure of what is a common carrier "in substance" then none can say that Appellee is a common carrier in substance.

In the *Valvoline* case the United States and the Interstate Commerce Commission urged that "since Valvoline is a pipe line company engaged in the interstate transportation of oil, it comes directly within the statutory definition;" and again that "The fact that Valvoline is a pipe line company is determinative of the fact that it is a common carrier within the meaning of the Act." This Court did not accept the argument, but held that "It is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline" (308 U. S. 146). The Court declined to dispose of the *Valvoline*

case upon a simpler basis, urged by the Government and Interstate Commerce Commission. Valvoline was held subject to the Act because it was engaged in "transportation" within the meaning of the Act.

While the Amendment of 1920, involved in the *Valvoline* case, made certain changes in the language of the Hepburn Amendment, involved in *The Pipe Line Cases*, there was no change in the Act to broaden its meaning or reach as applied to pipe lines. This appears not only from the statement of the Supreme Court (308 U. S. 145) but also from the fact that the pipe line operations of Valvoline were held subject to the Act as amended in 1920 upon substantially the same fact bases as the Standard Oil Company and its affiliates had been held subject to the Hepburn Amendment in the earlier case.

If the Supreme Court had considered tenable the contentions of the Government in *The Pipe Line Cases* with respect to the meaning and purpose of the Act, the Uncle Sam Oil Company's pipe line operations could not have been held to be beyond the reach of the Act. If the above stated contention, urged by the Government in the *Valvoline* case, had been considered sound, it would not have been necessary to base the holding that Valvoline's operations were within the reach of the Act upon the statement that, * * * "it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline." The fact that these contentions were rejected in those cases coupled with the statement in the *Valvoline* case (308 U. S. 145) that the meaning of the Act was not changed by the 1920 Amendment, compels the conclusion that the language of the 1920 Amendment is not any broader or more inclusive than the language of the Hepburn Amendment, and demonstrates that it does not represent an attempt by legislative act to include all interstate pipe lines.

In the brief for the United States and the Interstate Commerce Commission filed in this Court in the prior

Champlin case, the following statement was made (Brief, 8):

> "The words of Section 1(1) and (3), its legislative history, and the authoritative construction put upon these provisions by this court make it abundantly clear that appellant, being a pipe line company 'engaged in the transportation of oil or other commodity,' is a common carrier within the meaning of the Interstate Commerce Act, as amended, and, even if not a common carrier in the common law sense, may be required to forward the information sought by the order here entered pursuant to Section 19a."

Thus for a third time the Supreme Court was urged by the Government to hold that section 1(1) and (3) of the Interstate Commerce Act brings all interstate oil pipe lines under the Act. The Supreme Court did not so hold in either of the three cases and it could have made short shift of each of them if it had been willing to accept the contention of Government counsel. And, in the prior Champlin case Mr. Justice Reed observed that "the *Pipe Line* and *Valvoline* cases did not bring within the scope of the Interstate Commerce Act all pipe lines that carried oil interstate."

(f) The Act deals only with such as are "common carriers" in fact, and does not purport by use of the term "all pipe line companies" to impose upon private carriers the burdens of common carriers

The Interstate Commerce Act proposed to correct existing evils by requiring the carriers at which it was directed to furnish transportation at reasonable rates upon reasonable demand; and, to make the proposed remedy effective, Congress required the filing and publishing of rates and charges, prohibited rebates and other discriminations, and prescribed penalties for violation of the requirements and prohibitions of the Act. No such evils as those against which the Act was directed could exist as to private carriers.

The terms "all pipe line companies; telegraph, telephone and cable companies operating by wire or wireless; express companies; sleeping car companies" as used in the definition of the term "common carriers" in the 1920 Amendment, should be considered in the light of the over-all purpose of the Act and the express declaration that "The provisions of this Act shall apply to common carriers***." They should also be considered in the light of the meaning in which the terms "transportation" and "transmission" are used in the Act. The first sentence of section 1, declaring that the provisions of the Act shall apply to "common carriers" engaged in the "transportation" of passengers or property, or in the "transmission" of intelligence, evidently refers to "transportation" and "transmission" for others than the carrier, — transportation and transmission service rendered by common carriers. The terms first quoted were evidently used in their generally accepted and ordinarily understood meaning to describe and bring within the reach of the Act any company whose business is that of an interstate carrier engaged in the character of transportation or transmission ordinarily conducted by companies of one or the other of the named classes, — companies engaged as common carriers in interstate transportation of passengers or in interstate transportation of property for others or in interstate transmission of intelligence for others. The "transportation" of passengers is necessarily a carriage for others than the carrier. Certainly the term "transportation" was not used in one sense when referring to the "transportation" of passengers and in another sense when referring to the "transportation" of property.

In defining "common carrier" to include "all pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; ***" Congress evidently had in mind companies engaged in interstate "transportation" within the meaning of the term as used in the Act. So understood, the term would refer only to companies engaged

in business as common carriers in "the transportation of oil *** by pipe line ***; or the transmission of intelligence by wire or wireless ***." In the *Pennsylvania Railroad Company* case (298 U. S. 170, 174), this Court, citing the section of the Act in which the terms now under consideration were used, said, as we have heretofore stated, that "The Interstate Commerce Act (49 U. S. C., Sec. 1 *et seq.*) is aimed at common carriers exclusively, Sec. 1(1), (3), and not even at all these." Only if the term, "all pipe line companies" is given the interpretation Appellee advances, could that statement of this Court stand as a true interpretation of the Act. Conversely, the interpretation heretofore urged by the Government and adopted by the Commission cannot stand if the Act "is aimed at common carriers exclusively", as was said by Mr. Justice Cardozo.

The terms "all pipe line companies; telegraph, telephone and cable companies operating by wire or wireless; express companies; sleeping car companies," all used in the Act, have well understood meanings. The term "all pipe line companies" is descriptive of companies engaged as common carriers in transporting oil by means of pipe line. It does not include a company owning purely private lines, limited in use to some other business or incidental to the business of the owner. (*State Tax Commission vs. Petroleum Exploration,* 68 S. W. (2d) 777, 779; *Texas Company vs. Stephens,* 100 Tex. 628, 103 S. W. 481; *Col-Tex Refining Company vs. Hart,* 144 S. W. (2d) 909; *United States vs. Northwestern Ohio Natural Gas Company,* 141 F. 198; *Judson on Intersiate Commerce,* Sec. 136, p. 220, Second Edition).

The term "telegraph" companies is descriptive of companies engaged as common carriers in transmitting intelligence. It does not include a railroad operating telegraph lines for the safe and expeditious movement of its trains, but not for use by the public. (*Adams vs. Louisville N. O. & T. RR. Co.* (Miss.), 13 So. 932). In the Post Roads Act (14 Stat. 221, 47 U. S. C. 1) Congress used the term "tele-

graph company", and provided that such a company might construct lines over the public domain and along military or post roads. Later another statute (21 Stat. 31, 47 U. S. C. 7) was enacted extending the benefits of the former statute to railroads that operated telegraph lines. Evidently it was thought that the term "telegraph company" used in the original statute, did not include a railroad that operated telegraph lines.

The term "telephone" companies is descriptive of companies engaged as common carriers in supplying telephone service for others. It does not include a non-profit association which maintains a telephone system for the convenience and use of its owners only. (*People ex rel. Knowlton vs. Orange County Farmers & Merchants Assn.* (Cal.), 204 Pac. 873)

The term "express" companies is descriptive of companies engaged in the business of transporting parcels or other movable property in the capacity of a common carrier. (*American Ry. Express Co. vs. Wright* (Miss.), 91 So. 342) It does not include forwarding companies who collect, consolidate, ship and distribute less than carload lots of freight and express shipments. (*Acme Fast Freight, Inc., et al. vs. United States, et al.*, 30 F. Supp. 968, affirmed, *Acme Fast Freight, Inc., et al. vs. United States, et al.*, 309 U. S. 638)

Similarly, an oil company operating a line of railroad extending into its refinery is not a railroad corporation (*Humble Oil & Refining Co. vs. Hamer*, 167 S. W. (2d) 272); a lumber company operating a private railroad as an incident to its business is not a railroad company (*Sisk vs. White Oak Lbr. Co.* (Dist. Ct.), 14 Fed. (2d) 552; *Taenzer vs. Chicago, R. I. & P. RR. Co.*, 170 Fed. 240, 249); a steel company operating tracks and switch engines for use in switching freight cars is not a railroad company (*Taggart vs. Republic Iron & Steel Co.*, 141 Fed. 910); a lumber company operating a logging railroad is not subject to a statute directed against railroad companies (*Crowley*

vs. Polleys Lbr. Co., 9 Pac. (2d) 1068); a company doing a mortgage loan business, which writes title insurance as an incident thereto, is not an "insurance company" (*Bowers vs. Lawyers Mtg. Co.*, 285 U. S. 182).

It would do violence to the general purpose of the Act if it were held that the above terms were used to include corporations which operate pipe lines, telegraph lines, or telephone lines as an incident to another business, and which do not make the service available to others than the owners.

It is a matter of common knowledge that many pipe line companies and railroad companies construct along their rights-of-way telegraph or telephone lines and use them exclusively in transmitting messages necessary to the efficient operation of their properties. Appellee owns and operates for weather reports, maintenance of the pipe line and transmission of orders and directions, such type of telephone line from Enid to Rock Rapids. Is Appellee a telephone company, under the 1920 Amendment, and can it be compelled to open such telephone line to the use of the public in the transmission of messages? Obviously the Congress, in naming telephone companies in the definition of "common carriers", did not intend to include, as such, an oil refinery company which operates a private telephone line in the operation of its marketing business; and, by the same reasoning, Appellee cannot be said to be a "pipe line company" because of its operation of a private pipe line as a refinery facility.

It seems clear that the term "all pipe line companies" was used in the 1920 Amendment to describe companies whose principal business is that of acting as common carriers in the interstate transportation of oil by pipe line; that the term "telegraph companies" was used to describe companies whose principal business is that of acting as common carriers in the interstate transmission of intelligence; and that the term "telephone companies" was used to describe companies whose principal business is that of acting as common carriers in the interstate transmission of intelligence.

When the quoted terms are so understood, the interpretation of the Act conforms to its plainly dominant purpose and Appellee's pipe line operations are not within the Act.

The concluding clause of the first sentence of paragraph (3) of section 1 of the Act, "and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid, as common carriers for hire", does not limit the generality of the next preceding clause naming certain classes of companies, but adds individuals to the classes of companies so named and also adds corporations which, though not engaged principally in business as common carriers, do as a part of their business engage "in such transportation or transmission as aforesaid as common carriers for hire." They are not strictly speaking pipe line companies or telegraph companies, but if, as a part of their business, they engage as common carriers by pipe line or by telegraph wire, they are brought under the Act by the last clause of paragraph (3).

If Congress had intended by the terms "all pipe line companies, telegraph, telephone and cable companies operating by wire or wireless" to include all persons and corporations engaged in operating pipe lines, telephone or telegraph lines which cross state lines the concluding clause of the statutory definition of "common carrier" would have been a purposeless use of words, in so far as pipe line operations were concerned.

The fact that in the concluding clause Congress used the term "all persons, natural or artificial" demonstrates that Congress recognized that not all owners of interstate pipe lines are "pipe line companies". The term "pipe line company" would not, if treated in its ordinary meaning, include a company whose principal business is not that of a common carrier in interstate transportation of oil by pipe line, but which does, as a part of its business, engage in such transportation as a common carrier. Therefore, additional language was necessary to reach individuals and also to reach companies of the latter description. This was

accomplished by the use of the concluding clause of the definition, namely, "and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire". But the Act applies to such persons or companies only if their operations are conducted "for hire". So interpreted the statute does not include Appellee.

The last clause of the definition pointed out above evidently was intended to bring within the operation of the Act individuals and companies whose principal business is not "such transportation or transmission as aforesaid as common carriers for hire". The term "such transportation or transmission as aforesaid" evidently referred to "the transportation of passengers or property *** by railroad; or the transportation of oil *** by pipe line ***; or the transmission of intelligence by wire or wireless", by common carrier, as used in section 1 of the Act.

Such construction preserved the dominant purpose of the Act, — to reach persons and companies engaged in interstate transportation for the public, to require them to render adequate service at reasonable rates, to prohibit discrimination, rebating and other abuses. So construed, the exception to the Uncle Sam Oil Company in *The Pipe Line Cases*, in the light of the statement in the *Valvoline* case that the amendment did not change the meaning of the original Act, is justified. The statement in the *Valvoline* case that the last clause of sub-section (3) "and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire" is a "conjunctive not a modifier" and does not affect the generality of the first clause, is then given its obviously intended meaning.

In 1934 Congress created the Federal Communications Commission (48 Stat. 1064, U. S. C. Title 47, Sec. 152) and therein by sub-paragraph (b) of Section 602 (48 Stat. 1102) provided that:

> "The provisions of the Interstate Commerce Act, as amended, in so far as they relate to communication by wire or wireless, or to telegraph, telephone, or cable

companies operating by wire or wireless, except the last proviso of section 1(5) and the provisions of section 1(7), are hereby repealed."

The effect of this repeal was to delete from the first sentence of sub-paragraph (3) of section 1 of the Interstate Commerce Act, defining the term "common carrier", all reference to telegraph, telephone and cable companies operating by wire or wireless, with the result that the sentence was then made to read as follows:

> "The term 'common carrier' as used in this Act shall include all pipe line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire." (See Title 49, Sec. 1, 1944 pocket parts, U. S. C.)

In the Federal Communications Act (48 Stat. 1066), it was provided that:

> "'Common carrier', or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, in so far as such person is so engaged, be deemed a common carrier."

In Section 201 of the Federal Communications Commission Act (48 Stat. 1070) it was provided that:

> "It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor ***."

If Congress had intended in the 1920 Amendment to the Interstate Commerce Act, by the use of the terms "telegraph, telephone, and cable companies operating by wire or wireless," to bring within the regulatory powers of the

Interstate Commerce Commission all companies operating by wire or wireless, without regard to whether they operate as common carrier or not, it does not seem reasonable to suppose that Congress in enacting the Federal Communications Commission Act would have stripped the Interstate Commerce Commission of all power over all such companies and have subjected only such of them as are common carriers for hire to the jurisdiction of the Federal Communications Commission. The fact that Congress did take from the Interstate Commerce Commission jurisdiction over telegraph, telephone and cable companies and give to the Federal Communications Commission jurisdiction over such of them as are common carriers in the common law sense, indicates that Congress considered that the term "telegraph, telephone, and cable companies operating by wire or wireless", as used in the Interstate Commerce Act, was intended to refer only to such companies as are common carriers. Such legislative interpretation is highly persuasive. It follows that, if the term "telegraph, telephone, and cable companies operating by wire or wireless", as used in the definition of "common carrier", in the Interstate Commerce Act, was used to refer only to such of those companies as are common carriers, then the term "all pipe line companies" must have been used in the definition in the same sense; namely, as referring to "pipe line companies" which are common carriers.

Primary business purpose test

In *Brooks Transportation Company, Incorporated, et al., vs. United States of America, Interstate Commerce Commission, et al.*, an appeal from the United States District Court for the Eastern District of Virginia to this Court, No. 517, October term, 1950 (affirmed Feb. 26, 1951) — the question of the right of the Lenoir Chair Company to continue its "business" of transporting *its own manufactured products to its customers in its own motor trucks* upon sales made f.o.b. *its own factories — to which is added*

a charge comparable to the charges of rail or motor common carriers for like service was before a Three Judge Court; Circuit Judge Dobie, for the Three Judge Court, said:

> "The Commission, in deciding that Lenoir and Schenley were *private carriers*, as opposed to *contract carriers* or *common carriers*, applied what is known as the *primary business test*. In other words, if it is established that the *primary business* of a concern *is the manufacture or sale of goods which the owner transports in furtherance of that business* and the *transportation is merely incidental thereto, the carriage of such goods from the factory or other place of business to the customer is private carriage even though a charge for transportation is included in the selling price or is added thereto as a separate item.* (Italics ours)
>
> "The Commission has so held consistently in its interpretations of the statutory provisions regulating the various categories of motor carriers. D. L. Wartena, Inc., Common Carrier Application 4 M.C.C. 619; See, Congoleum-Nairn, Inc., Common Carrier Application, 2 M.C.C. 237; Swanson Contract Carrier Application, 12 M.C.C. 516; Murphy Common Carrier Application, 21 M.C.C. 54; Duli Contract Carrier Application, 32 M.C.C. 158; Woitishek Common Carrier Application, 42 M.C.C. 193.
>
> "In the Woitishek Case (discussed at length in all the briefs before us), the primary business test,' as a criterion for distinguishing between (on the one hand) private carriers and (on the other hand) contract and common carriers, was carefully re-examined and re-analyzed by the Commission, and the conclusion was reached,
>
> "'After careful reconsideration of the entire subject, * * * that we should continue as in the past to determine all issues of for-hire versus private carriage on the basis of the operator's primary business.'"

Champlin's primary business is manufacturing and marketing. Its pipe line operations are merely incidental to its primary business.

So, if Champlin wishes to move gasoline or other petroleum products by motor truck for delivery to its terminals in Iowa, or Nebraska, it is under the decisions of the Commission a private carrier for such operation, but, if it elects to haul the identical products to the identical destinations through a private pipe line, the Government contends it becomes a "common carrier" and such facilities must be so dedicated.

The inconsistency in the Commission's position is utterly indefensible.

WHEREFORE, it is respectfully submitted that the judgment of the lower Court should be in all things affirmed, and Appellee prays for such an order.

Respectfully submitted,

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APPENDIX "A".

Chap. 104—An Act to Regulate Commerce (24 Stat. 379), February 4, 1887.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country or from any place in the United States, through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country; *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Section 1 of Hepburn Amendment (34 Stat. 584), June 29, 1906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "common carrier" as used in this Act shall include express companies and sleeping car companies. The term "railroad", as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operat-

ing a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this Act, shall, after January first, nineteen hundred and seven directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such Homes; to necessary caretakers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors and

immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provisions, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without

discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Section 1 of the 1920 Amendment to Interstate Commerce Act (41 Stat. 474-478), February 28, 1920.

The first four paragraphs of section 1 of the Interstate Commerce Act, as such paragraphs appear in section 7 of the Commerce Court Act, are hereby amended to read as follows:

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless;— from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply —

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

(b) To the transmission of intelligence by wire or wireless wholly within one State and not transmitted to or from a foreign country from or to any place in the United States as aforesaid; or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this act except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(3) The term "common carrier" as used in this Act shall include all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this Act it shall be held to mean "common carrier." The term "railroad" as used in this Act shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used

in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported. The term "transmission" as used in this Act shall include the transmission of intelligence through the application of electrical energy or other use of electricity, whether by means of wire, cable, radio apparatus, or other wire or wireless conductors or appliances, and all instrumentalities and facilities for and services in connection with the receipt, forwarding, and delivery of messages, communications, or other intelligence so transmitted, hereinafter also collectively called messages.

(4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: Provided, That messages by wire or wireless subject to the provisions of this Act may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable and different rates may be charged for the different classes of messages: And provided further, That nothing in this Act shall be construed to prevent telephone, tele-

graph, and cable companies from entering into contracts with common carriers for the exchange of service.

(6) It is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

APPENDIX 'B'

ADDRESS REPLY TO THE ATTORNEY GENERAL AND REFER TO INITIALS AND NUMBER

59-12-425

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

FOR VICTORY BUY UNITED STATES WAR BONDS AND STAMPS

May 23, 1947

Harry O. Glasser, Esq.,
Enid, Oklahoma.

Dear Mr. Glasser:

In the case of Champlin Refining Company v. United States the Supreme Court on November 18, 1946 held that the pipeline of Champlin Refining Company was a common carrier under Section 1 of the Interstate Commerce Act and that it was required to comply with the valuation order of the Interstate Commerce Commission. We are advised that on January 8, 1947 the order on the mandate was entered.

Please advise me whether you have filed schedules of rates with the Interstate Commerce Commission in compliance with Section 6 (1) and (7) of the Interstate Commerce Act and Section 1 of the Elkins Act. If not, would you care to state the reasons, if any, why such schedules have not been filed.

Sincerely yours,

JOHN F. SONNETT
Assistant Attorney General